TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 126

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, PETITIONER,

vs.

SOUTH CAROLINA TAX COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

PETITION FOR CERTIORARI FILED JUNE 3, 1960
CERTIORARI GRANTED OCTOBER 10, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 426

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, PETITIONER,

vs.

SOUTH CAROLINA TAX COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

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[fol. A]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

APPEAL FROM LAURENS COUNTY COURT OF COMMON PLEAS

HONORABLE C. BRUCE LITTLEJOHN, PRESIDING JUDGE

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, Appellant,

against

SOUTH CAROLINA TAX COMMISSION and OTIS W. LIVINGSTON, Chairman, JAMES W. CRAIN, JAMES H. SULLIVAN, J. A. CALHOUN, JR., FRANCIS M. PINCKNEY, Constituting the Members of the South Carolina Tax Commission, Respondents.

[fol. 1]

STATEMENT

This is an action instituted by appellant by service of a Summons and Complaint upon the respondents on January 20, 1959, for the recovery of documentary stamp taxes totaling Twenty-two Hundred Seventy Dollars ($2,270.00) paid by appellant under protest on December 31, 1958. The assessment in question was on ten promissory notes executed by appellant within South Carolina in favor of the Federal Home Loan Bank of Greensboro and were given by appellant to the latter institution as evidence of "advances" of credit from the latter to the former.

Appellant is an institution created pursuant to an Act of Congress, known as the Home Owner's Loan Act of 1933 (12 USCA 1464), for the purposes of encouraging thrift and home ownership within the area it serves. The Federal Home Loan Bank of Greensboro, hereinafter referred to as the "Bank," is that institution which represents the Federal Home Loan Bank System in the district in which appellant is located. The Bank was created by Act

(of Congress) of July 22, 1932 (12 USCA 1421 *et seq.*), for the purpose, among others, of directing and controlling the flow of mortgage money to member and non-member direct-lending institutions by way of advances of credit A state-chartered building and loan association or similar institution making home mortgage loans may qualify as a non-member borrower of the Bank upon meeting the conditions set forth in the Federal Home Loan Bank Act, specifically 12 USCA 1424; upon meeting the requirements of a non-member borrower, a state-chartered building and loan association may secure advances of credit from the Federal Home Loan Bank of Greensboro as does appellant, the latter being a member of the Bank by virtue of its in-[fol. 2] corporation under the Home Owners Loan Act of 1933.

The assessment in question was made pursuant to Section 65-688, *Code of Laws of South Carolina, 1952*, which imposes a stamp tax on promissory notes. Appellant seeks a refund of the money paid under the assessment on the ground that the South Carolina tax as applied to the notes in question is illegal, null, void and unconstitutional in that the notes evincing "advances" are specifically exempted from State or local taxation by the Federal Home Loan Bank Act (12 USCA 1433), and that such tax thereby imposes a tax by the State upon an instrumentality of the Federal Government in contravention of the express exemption granted by the Congress.

Answering within due time, respondents alleged that the tax and assessment laid upon the promissory notes involved herein were in all respects legal and that they are specifically authorized by the Home Owner's Loan Act of 1933, 12 USCA 1464(h).

There being no material disagreement as to the facts, appellant, upon notice to respondents, moved before Honorable C. Bruce Littlejohn, Presiding Judge of Court of Common Pleas for Laurens County, on March 9, 1959, for Judgment on the Pleadings. Upon the hearing of the motion, the constitutionality of the several Federal Acts was not questioned by either party; the sole question before the Lower Court was whether or not the tax and assess-

ment in question are unconstitutional and a nullity by virtue of the Acts of Congress. By Order dated June 25, 1959, Judge Littlejohn held that the tax and assessment were legal and not prohibited and that appellant was not entitled to the refund.

[fol. 3] Appellant's Notice of Intention to Appeal to the Supreme Court was served on respondents on July 1, 1959; and the sole question thereby raised is the validity of the South Carolina stamp tax as applied to the notes evincing "advances" from the Bank to appellant.

IN THE COURT OF COMMON PLEAS OF LAURENS COUNTY

COMPLAINT

Plaintiff alleges:

1. That the defendant South Carolina Tax Commission is an agency of the State of South Carolina, charged with the duty and responsibility of assessing and collecting taxes due and owing to the State of South Carolina; that the individual defendants are residents of the State of South Carolina and are the duly appointed and qualified Commissioners of the South Carolina Tax Commission; and that, upon information and belief, this Court has jurisdiction over the parties hereto and the subject-matter of this action.

2. That the plaintiff is a Federal Savings and Loan Association organized and existing under the laws of the United States of America, particularly the Home Owners Loan Act of 1933 (48 Stat. 128, 12 U. S. C. A. 1461 *et seq.*), with its principal place of business in the City of Laurens, County of Laurens, State of South Carolina; that pursuant to the provisions of the Home Owners Loan Act of 1933, the plaintiff is a member of the Federal Home Loan Bank of the district in which it is located; and that under the provisions of the Home Owners Loan Act of 1933 and the Federal Home Loan Bank Act, 475 Stat. 725, 12 U. S. C. A. 1421 *et seq.*, the plaintiff is an agency and arm of the United States of America.

3. That under the provisions of the Home Owners Loan Act of 1933 and the Federal Home Loan Bank Act, the plaintiff is an institution created and existing for the pur-
[fol. 4] pose of encouraging thrift and savings in the community in which it exists, and for the purpose of making available to the people of the community in which it exists low-interest money for the purpose of home ownership.

4. That the purpose of the Federal Home Loan Bank Act was to create an agency to, among other things, control and direct the flow of money throughout the United States of America from areas of plenty to areas of need; and that to facilitate the foregoing, member and certain non-member borrowing institutions of the Federal Home Loan Bank System are authorized to secure advances of credit from the District Federal Home Loan Bank whenever it appears that such advances are needed to meet the needs of a community.

5. That pursuant to the Federal Home Loan Bank Act, there was created and is now existing the Federal Home Loan Bank of Greensboro, North Carolina; that the plaintiff is a member of said Federal Home Loan Bank of Greensboro, as aforesaid; that for the purpose of making mortgage money available in the community which it serves, the plaintiff has secured advances of credit totalling Five Million Six Hundred Seventy-five Thousand Dollars ($5,675,000.00) since August 12, 1953; that each time the plaintiff secured an advance from the Federal Home Loan Bank of Greensboro it executed, as required by said law, at Laurens, South Carolina, its promissory note in writing to the Federal Home Loan Bank of Greensboro; that the amounts advanced since August 12, 1953, are set out on Schedule A, which is hereto attached and made a part of this Complaint.

6. That neither the plaintiff nor the Federal Home Loan Bank of Greensboro has paid, or caused to have been paid, [fol. 5] any documentary stamp tax to the State of South Carolina upon the notes in question for the reasons hereinafter set forth.

7. That in order to effect the ultimate aim of the Federal Home Loan Bank Act and the Home Owners Loan Act of 1933, *i.e.*; providing low-interest money for the purpose of home ownership, the Congress of the United States exempted from taxation by any state, county, municipality or local taxing authority the advances of credit made by any Federal Home Loan Bank to qualified borrowing institutions, of which latter class the plaintiff is a member.

8. That the ability of the plaintiff to secure advances of credit from the Federal Home Loan Bank of Greensboro is a primary and necessary activity directly relating to the distribution and dissemination of low-interest credit to the borrowing public which the plaintiff serves; that the advances made from the Federal Home Loan Bank to the plaintiff are a function of the Government of the United States of America under the terms of the Federal Home Loan Bank Act and the Home Owners Loan Act of 1933, as amended; and that the Documentary Stamp Tax Act of South Carolina, were it applied in the present situation, would effectively prevent the aforesaid agencies of the United States of America from serving the government and the people in the manner intended by the Congress of the United States.

9. That notwithstanding the provisions of the Federal Home Loan Bank Act and Home Owners Loan Act of 1933, the defendant South Carolina Tax Commission, on about July 2, 1958, acting as an agency of the State of South Carolina, served the plaintiff with a "Documentary Violation Report," wherein an assessment in the amount of Two Thousand Two Hundred Seventy and no/100 [fol. 6] ($2,270.00) Dollars was levied against the plaintiff for documentary stamps which had not been affixed to the notes given by this plaintiff to the Federal Home Loan Bank of Greensboro, as aforesaid.

10. That the documentary stamp tax assessment against this plaintiff upon the advances herein set forth is illegal, null and void in that it is an attempt by the State of South Carolina to impose a stamp or excise tax upon an instrumentality or agency of the United States Government

in direct violation of the tax exemption granted this plaintiff and the Federal Home Loan Bank of Greensboro by the Federal Home Loan Bank Act, 12 U. S. C. A. 1421 *et seq.*; and that such tax exemption, as aforesaid, is a valid exercise by the Congress of the United States of its power to regulate and protect governmental agencies created under a constitutional exercise of congressional power.

11. That on or about December 31, 1958, the plaintiff paid the sum of Two Thousand Two Hundred Seventy and no/100 ($2,270.00) Dollars under protest to the defendant South Carolina Tax Commission as provided by Section 65-2661, *Code of Laws of South Carolina, 1952;* and that plaintiff has instituted this action to recover the same as provided by Section 65-2662, *Code of Laws of South Carolina, 1952.*

Wherefore, plaintiff prays:

(a) That the assessment and collection of the tax upon the notes in question be declared illegal, null and void;

(b) That the Court do certify that documentary stamp taxes paid by this plaintiff under protest, totalling Two Thousand Two Hundred Seventy and no/100 ($2,270.00) Dollars, should be refunded to plaintiff; and

[fol. 7] (c) For such other and further relief that may be just and proper.

W. Hummel Harley, Laurens, S. C.; Thomas H. Pope, Robert D. Schumpert, Rembert D. Parler, The Public Square, Newberry, S. C., Attorneys for Plaintiff.

Newberry, South Carolina, January , 1959.

SCHEDULE A TO COMPLAINT

Notes Executed and Delivered by Laurens Federal Savings and Loan Association to the Federal Home Loan Bank of Greensboro

Date	*Amount*
10- 7-57	$ 590,000.00
1- 3-58	570,000.00
7-11-57	650,000.00
4-15-57	680,000.00
1-16-57	710,000.00
10-19-56	740,000.00
7-26-56	760,000.00
8- 2-55	800,000.00
4-16-53	125,000.00
8-12-53	50,000.00
Total	$5,675,000.00

[fol. 8]

IN THE COURT OF COMMON PLEAS OF LAURENS COUNTY

ANSWER

Defendants, answering the complaint herein, would respectfully show to the Court:

1. That they deny each and every allegation of the complaint not hereinafter admitted, qualified or explained.

2. The allegations of paragraphs 1, 3, 5, 6, 9 and 11 of the complaint are admitted.

3. The allegations of paragraph 2 of the complaint are admitted except that defendants allege that plaintiff, being a Federal Savings and Loan Association, may be properly termed an instrumentality of the United States rather than "an agency or arm" of the United States as alleged.

4. Answering paragraph 4 of the complaint, defendants admit that among the purposes of the Federal Home Loan Bank Act was that of creating the means to control and direct the flow of money throughout the United States through the means of member and non-member borrowing

institutions whereby advances of credit can be had to aid in the flow of money.

5. The allegations of paragraphs 7 and 8 of the complaint are denied, defendants alleging that the taxes involved in this action are properly and legally assessed against plaintiff.

6. Answering paragraph 10 of the complaint, the allegations thereof are denied, defendants alleging that the taxes imposed against plaintiff are in all respects just, legal and proper and specifically authorized by the Act of Congress creating Federal Savings and Loan Associations known as the Home Owners Loan Act of 1933, more specifically, 12 U. S. C. A., 1464(h).

[fol. 9] Wherefore, having fully answered the complaint herein, defendants pray that the same be dismissed with costs.

James M. Windham; Assistant Attorney General for South Carolina, Attorney for Defendant, South Carolina Tax Commission.

Columbia, South Carolina, February 9, 1959.

IN THE COURT OF COMMON PLEAS OF LAURENS COUNTY

NOTE RE EXHIBIT

Note of Laurens Federal Savings and Loan Association to the Federal Home Loan Bank of Greensboro, not to be printed but to be handed up to the Court.

IN THE COURT OF COMMON PLEAS OF LAURENS COUNTY

OPINION AND JUDGMENT—June 25, 1959

This matter was heard by me on March 9, 1959, at Laurens, during the regular term of Court, without a jury, there being no disagreement as to the facts. In addition to the oral arguments, each side filed comprehensive written briefs;

The action arose because of the assessment against plaintiff by the South Carolina Tax Commission of documentary stamp taxes on certain notes executed by plaintiff in South Carolina, the notes being given by plaintiff to the Federal Home Loan Bank of Greensboro, North Carolina. The plaintiff conceiving that the taxes so assessed, to wit, the sum of Two Thousand Two Hundred Seventy and no/100 ($2,270.00) Dollars, to have been improperly and unlawfully assessed against it, paid the sum under protest and within the proper time, brought this action to recover the amount so paid.

[fol. 10] The contention of the plaintiff is that the assessment of the taxes in question is not authorized and is improper under the provisions of 12 U. S. C. A. 1433 enacted July 22, 1932 known and cited as the "Federal Home Loan Bank Act". On the part of defendants, it is contended that the taxes were legally and properly assessed and collected. Defendants rely thereabout on the provisions of 12 U. S. C. A. 1464(h) known and cited as the "Home Owners' Loan Act of 1933" enacted June 13, 1933.

The latter enacted Federal statute, 12 U. S. C. A. 1464(h), exempts federal building and loan associations, their franchises, capital, reserves, surplus, loans and income from taxation on the part of the State, territorial, county or municipal taxing authority greater than that imposed by such taxing authority on other similar local mutual or cooperative thrift or home financing institutions.

There is no dispute between the parties concerning the fact that defendants, in imposing the taxes in question, does likewise impose the same kind of taxes and, at the same rate, with respect to notes executed by state chartered building and loan associations and made payable to the Federal Home Loan Bank of Greensboro. The plaintiff contends that any such tax is improper and unauthorized on the part of defendants relying thereabout upon the provisions of the aforementioned Federal statute, 12 U. S. C. A. 1433.

The provisions of 12 U. S. C. A. 1433, relied upon by plaintiff, were enacted, as aforementioned, on July 22, 1932. Thereafter, and in the face of that statute, the

Congress enacted the provisions of 12 U. S. C. A. 1464(h), its enactment being June 13, 1933. It is under this latter Act that Congress provided for the creation of federal [fol. 11] savings and loan associations of which plaintiff is one.

This Federal statute providing for the creation of federal building and loan associations clearly seems to give to such federal building and loan associations exemption from taxation by State or lesser taxing authorities, not only with respect to its loans and franchise but also with respect to its capital, reserves, surplus and income but the exemption thereby provided for is not absolute. Instead the statute permits taxation by the State but no greater than that imposed by such authority on other similar local institutions. It seems to me that is the precise situation here and I so hold.

I hold that if Congress did not intend to permit the taxation by the State and lesser taxing authorities to the extent and within the limits of 12 U. S. C. A. 1464(h), it (the Congress) would not have found it necessary to have passed such Act when there was already on the Federal statute books a statute, 12 U. S. C. A. 1433, which, under the position taken by plaintiff in this matter, would prevent taxation of the notes executed by it here. A legislative body in exacting a law is never presumed to do a useless thing. *Fulghum* v. *Bleakley* (1935), 177 S. C. 286, 181 S. E. 30; *Gaffney* v. *Mallory* (1938), 186 S. C. 337, 195 S. E. 840.

Therefore, I hold that it was the intent of the Congress not to grant to federal building and loan associations such as plaintiff, complete immunity from State taxation but immunity only insofar as provided by the clear terms of 12 U. S. C. A. 1433, and which terms were complied with by defendants in this matter.

The defendants, charged with the official duty of administering certain tax laws, of which that involved herein is one, has, for many years, interpreted the statute to per- [fol. 12] mit the taxation as applied here. It is a generally accepted principle, laid down by the Courts, that when those charged with the execution of a statute have consistently treated it in a certain way, the interpretation by

such administrative body will not be overturned by the Courts without cogent reasons. *Read Phosphate Co.* v. *South Carolina Tax Commission*, 169 S. C. 314, 168 S. E. 722; *Hadden* v. *South Carolina Tax Commission*, 183 S. C. 38, 190 S. E. 249 and others.

The case of *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21, 60 S. Ct. 15, 84 L. Ed. 11, 124 A. L. R. 1236 relied upon by plaintiff in support of their position has not been overlooked by me. That case does not appear to have construed the provisions of subparagraph (h) of 12 U. S. C. A. 1464 but instead appears to have construed the provisions of subsections (c), (e) and (f) of 12 U. S. C. A. 1463. Additionally, there was involved there the matter of a mortgage executed to the Home Owners' Loan Corporation. Here, the instrument taxed was a note executed by a federal building and loan association in South Carolina with the payee, a federal home loan bank.

The Supreme Court of Minnesota, in a case arising subsequent to the decision of the United States Supreme Court in *Pittman* v. *Home Owners' Loan Corporation*, that is *State* v. *Minnesota Federal Savings and Loan Association* (Aug. 14, 1944), 15 N. W. (2d) 568, 218 Minn. 220, went into the provisions of the Home Owners' Loan Act of 1933 (12 U. S. C. A. 1464(h)) and noted that it prohibited the State and other taxing authorities from imposing a tax on federal savings and loan associations where such tax was greater than that imposed by the State on other similar local mutual or cooperative thrift and home financing in- [fol. 13] stitutions. See also *Commissioner of Corporations and Taxation* v. *Flaherty*, 306 Mass. 461, 28 N. E. (2d) 433. In the instant case, the statutory limitation upon the authority of the State to tax is not violated as all similar institutions, state and federal, are taxed the same.

It is, Therefore, Ordered, Adjudged and Decreed that the taxes here involved were properly assessed and collected and that they should be retained by defendants.

And it is so Ordered.

Bruce Littlejohn, Presiding Judge, Eighth Judicial Circuit.

Spartanburg, South Carolina, June 25, 1959.

IN THE COURT OF COMMON PLEAS OF LAURENS COUNTY

EXCEPTIONS

1. His Honor, the Presiding Judge, erred in failing to find as a matter of law that the notes executed by appellant to the Federal Home Loan Bank of Greensboro were exempted from State taxation by Act (of Congress) of July 22, 1932, Federal Home Loan Bank Act, c. 522, sec. 1, 47 Stat. 725, 12 U. S. C. A. 1421 *et seq.*, the error being that advances of credit from the Federal Home Loan Banks to qualified member and non-member institutions are specifically exempted from State taxation by said Act.

2. His Honor, the Presiding Judge, erred in holding that it was the intent of Congress in enacting the Home Owners Loan Act of 1933, 12 U. S. C. A. 1464 *et seq.*, that the "advances" of a Federal Home Loan Bank, as evidenced by the notes in question, could be taxed by the several states, the error being that the Home Owners' [fol. 14] Loan Act of 1933, 12 U. S. C. A. 1464(h), only allows State taxation of federal savings and loan associations in certain, specified areas and the "advances" of a Federal Home Loan Bank are not therein included.

3. His Honor, the Presiding Judge, erred in holding, directly or inferentially, that respondents have for many years interpreted the Federal Home Loan Bank Act or the Home Owners Loan Act of 1933 as allowing the State to tax the "advances" of a Federal Home Loan Bank, the error being that respondents are not, as a matter of law, charged with the responsibility of administering said Acts, and that there is nothing in the record to substantiate such a finding.

4. His Honor, the Presiding Judge, erred in holding, directly or inferentially, that respondents' interpretation of Section 65-688, *Code of Laws of South Carolina, 1952*, as allowing the taxation of "advances" of a Federal Home Loan Bank by the State should be given weight in determining the question of the legality of the tax in question, the error being that respondents' interpretation of a State statute is not relevant to a proper construction of the Federal Acts.

5. His Honor, the Presiding Judge, erred in holding, directly or inferentially, that the notes in question are subject to taxation because the same notes executed by a state-chartered building and loan association would be subject to State taxation, the error being that a state-chartered building and loan or similar institution which secures advances of credit from the Federal Home Loan Bank System is exempted by the Federal Home Loan Bank Act, specifically 12 U. S. C. A. 1433, insofar as the notes representing the "advances" are concerned.

[fol. 15]

IN THE COURT OF COMMON PLEAS OF LAURENS COUNTY

AGREEMENT AS TO RECORD—September 12, 1958

It is agreed that when printed, the following Record shall constitute the Case for Appeal to be filed in the Supreme Court and that a signed copy of the foregoing when printed, shall constitute the Return to be filed with the Clerk of Court of Common Pleas for Laurens County.

W. Hummel Harley, Laurens, S. C.; Thomas H. Pope, Robert D. Schumpert, Rembert D. Parler, Newberry, S. C., Attorneys for Appellant.

James M. Windham, Columbia, S. C., Attorney for Respondents.

September 12, 1959.

[fol. 16] Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 18]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

[Title omitted]

PETITION FOR REHEARING—Filed February 26, 1960

The undersigned attorneys for appellant respectfully petition this Honorable Court for a rehearing of the above entitled cause for the following reason:

That this Honorable Court misapprehended the holding of the U. S. Supreme Court in the cases of *Pittman* v. *Home Owners' Loan Corporation*, 308 U. S. 21, 60 S. Ct. 15, 84 L. Ed. 11, and *Federal Land Bank* v. *Crosland*, 261 U. S. 374, 43 S. Ct. 385, 67 L. Ed. 703, in that it failed to construe said opinions as holding that it matters not upon whom the State attempts to place the burden of a State Tax in regard to notes and/or mortgages given by or to the Federal Home Loan Bank of Greensboro, N. C., or similar federal agencies.

The undersigned attorneys respectfully represent that there is no specific property involved in this cause which would be affected by a stay of the remittitur.

Respectfully submitted,

W. Hummel Harley, Laurens, South Carolina; Thomas H. Pope, Robert D. Schumpert, Rembert D. Parler, Newberry, South Carolina, Attorneys for Petitioner-Appellant.

Newberry, South Carolina, February 15, 1960.

[fol. 19] CERTIFICATE

I, the undersigned attorney, do hereby certify that I am duly admitted to practice law before the Highest Court of the State of South Carolina, that I have no interest in the above-entitled cause, that I have read the within ground for a petition for rehearing in said cause, in connection with the record therein, and that I believe there is merit in the ground presented.

R. Aubrey Harley, Attorney at Law, Newberry, S. C.

Newberry, S. C., February 15, 1960.

[fol. 20] [File endorsement omitted]

Petition Denied.

T. H. Stukes, C.J., C. A. Taylor, A.J., G. Dewey Oxner, A.J., Lionel K. Legge, A.J., Joseph R. Moss, A.J.

[fol. 21]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

LAURENS FEDERAL SAVINGS & LOAN ASSOCIATION, Appellant,

v.

SOUTH CAROLINA TAX COMMISSION and OTIS W. LIVINGSTON, Chairman, JAMES W. CRAIN, JAMES H. SULLIVAN, J. A. CALHOUN, JR., FRANCIS M. PINCKNEY, Constituting the Members of the S. C. Tax Commission, Respondents.

Appeal From Laurens County
C. Bruce Littlejohn, Judge

Case No. 4535

Opinion No. 17609

AFFIRMED

• • • • • • •

OPINION—Filed February 5, 1960

Moss, A. J.: This action was brought under the provisions of Sections 65-2661-2 of the 1952 Code of Laws of South Carolina by the appellant, Laurens Federal Savings and Loan Association, against the South Carolina Tax Commission, to recover documentary stamp taxes in the amount of $2,270.00, which appellant paid under protest. The assessment for documentary stamps against the appellant was on ten promissory notes executed by it to

the Federal Home Loan Bank of Greensboro, North Carolina, such assessment being made pursuant to Section 65-688 of the 1952 Code of Laws of South Carolina, which imposes on promissory notes a stamp tax of 4¢ on each $100.00, or fractional part thereof.

The appellant is a Federal Savings and Loan Association, chartered pursuant to the provisions of an Act of Congress known as the "Home Owners' Loan Act of 1933", enacted into law June 13, 1933, as amended, 12 U. S. C. A. 1464, for the purpose of encouraging thrift and home ownership within the area it serves. The Federal Home Loan Bank of Greensboro, North Carolina, was created under an Act of Congress, known as the "Federal Home Loan Bank Act", enacted July 22, 1932, 12 U. S. C. A. 1421, et seq., for the purpose, *inter alia*, of directing and controlling the flow of mortgage money to member and non-member direct-lending institutions by way of advances of credit. A state-chartered building and loan association or similar institution making home mortgage loans may qualify as a non-member borrower of the Bank upon meeting the conditions set forth in the Federal Home Loan Bank Act, specifically 12 U. S. C. A. 1424; upon meeting the requirements of a non-member borrower; a state-chartered building and loan association may secure advances of credit from the Federal Home Loan Bank of Greensboro as does appellant, the latter being a member of the Bank by virtue of its incorporation under the Home Owners' Loan Act of 1933.

It is provided in 12 U. S. C. A. 1430 (a) that the Federal Home Loan Bank is authorized to make advances to its members upon the security of home mortgages, and in Section (c) of said Statute, that such advances shall be made upon the note or obligation of the member or non-member borrower. It was upon ten such notes that the respondent imposed a documentary stamp tax as provided by Section 65-688 of the 1952 Code of Laws of South Carolina. The appellant paid the documentary stamp taxes so assessed under protest and timely brought this action to recover such.

In the lower Court the appellant contended that the respondent could not legally assess and collect the stamp taxes

involved in this action because of the provisions of 12 U. S. C. A. 1433, which operates to preclude the taxation of the promissory notes executed by the appellant. The respondent contends that the provisions of 12 U. S. C. A. 1464 (h) specifically authorize the taxes.

[fol. 22] There being no material disagreement as to the facts, the appellant moved before the Honorable C. Bruce Littlejohn, the Presiding Judge, for judgment on the pleadings. Judge Littlejohn held that the stamp tax assessment as made by the respondent was legal and the appellant was not entitled to the claimed refund. This appeal followed.

The question to be determined upon this appeal is whether the respondent, by virtue of the provisions of 12 U. S. C. A. 1464 (h), can legally subject the promissory notes given by the appellant to the Federal Home Loan Bank of Greensboro, North Carolina, to South Carolina documentary stamps, or is it precluded from so doing by virtue of the provisions of 12 U. S. C. A. 1433.

The complaint in this action alleges that the promissory notes of the appellant to the Federal Home Loan Bank of Greensboro, North Carolina, were executed at Laurens, South Carolina, the place of business of the appellant. It was held in the case of Graniteville Mfg. Co. v. Query, et al., 44 F. (2d) 64, affirmed on appeal to the United States Supreme Court, 283 U. S. 376, 51 S. Ct. 515, 75 L. Ed. 1126, that South Carolina may validly impose a stamp tax upon promissory notes executed within the State though payable to banks at their places of business outside the State. Therefore, it follows that unless there is an appropriate exemption applying to the notes executed by the appellant, they should bear South Carolina documentary stamps as is fixed and required by Section 65-688 of the 1952 Code of Laws of South Carolina. There is no exemption under our documentary tax statute which would excuse the appellant from affixing the required stamps to its notes, even though such were executed to the Federal Home Loan Bank of Greensboro, North Carolina.

This Court has held that constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer

claiming an exemption, and he must, in order to be entitled to such exemption, clearly bring himself within the exemption on which he relies. Textile Hall Corp. v. Hill, 215 S. C. 262, 54 S. E. (2d) 809; Arkwright Mills v. Murph, 219 S. C. 438, 65 S. E. (2d) 665; and M. B. Kahn Construction Co. v. Crain, et al., 222 S. C. 17, 71 S. E. (2d) 503.

There is no dispute between the parties to this action concerning the fact that the respondent, in imposing the documentary stamp taxes in question, does likewise impose the same kind of taxes and, at the same rate, with respect to notes executed by State chartered Building and Loan Associations to the Federal Home Loan Bank of Greensboro, North Carolina. The appellant contends, however, that any such tax is improper and unauthorized on the part of the respondent and relies upon the provisions of the aforementioned Federal Statute, 12 U. S. C. A. 1433. This statute was enacted on July 22, 1932, as a part of the Act creating the Federal Home Loan Bank, and with reference to exemptions from taxation, provides:

> "• • • The bank, including its franchise, its capital, reserves, and surplus, its advances, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. • • •"

It is clear from the foregoing statute that the immunity provided therein from taxation applies only to the Federal Home Loan Bank. The respondent here has not sought to place any documentary tax upon the Federal Home Loan Bank but such has been assessed against the appellant. If the respondent had attempted to place a documentary tax upon some obligation issued by the Federal Home Loan Bank, then the above quoted statute would be applicable and such bank entitled to the immunity therein provided.

The appellant cites and relies upon the case of Pittman v. Home Owners' Loan Corporation, 308 U. S. 21, 60 S. Ct.

15, 84 L. Ed. 11, where it was held that a tax imposed by a State statute upon every mortgage recorded or offered for record at the rate of 10¢ for every $100.00 of the principal amount of the debt secured, was not merely a fee for the privilege of recording the mortgage but was a tax on the mortgage itself, so as to be inapplicable to a mortgage offered for record by the Home Owners' Loan Corporation, [fol. 23] it being provided by the Act establishing such corporation, that its loan should be exempt from state and municipal taxation. We should emphasize that the mortgage sought to be taxed in the Pittman case was offered for record by the Home Owners' Loan Corporation. It is readily apparent that the rule there announced is not applicable under the factual situation here. We should also point out in the Pittman case that the tax was sought to be imposed against the corporation which was immune from such tax by reason of the Federal Statute.

The appellant asserts that a Federal Savings & Loan Association is an instrumentality or agency of the United States, and, as such, is exempt from State taxation. In the case of Capitol Building & Loan Association, et al. v. Kansas Commission of Labor and Industry, et al., 148 Kan. 446, 83 P. (2d) 106, 118 A. L. R. 1212, an action was brought by a Building & Loan Association organized under Kansas law to determine whether it was exempt as a federal instrumentality from making contributions to the State Unemployment Compensation Fund. It was contended by the plaintiff that by virtue of their ownership of stock in the Federal Home Loan Bank and their consequent membership in its corporate entity, they themselves are federal instrumentalities and are exempt from making contributions to the Unemployment Compensation Fund. The Kansas Supreme Court, in rejecting the claim of the plaintiff, and holding the Building & Loan Association liable for the Unemployment Compensation Fund taxes, said:

> "The term 'Federal instrumentality' is not defined in our statutes, but it is a common one in the law books. An instrumentality is anything used as a means or agency. 32 C. J. 947. Therefore a Federal instrumentality is a means or agency used by the Federal government. In the law books the terms 'Federal

agency' and 'Federal instrumentality' are used interchangeably. Thus in 2 Cooley on Taxation (4th ed.) 1300, it is said:

"'A corporation cannot escape state taxation merely because it was created by the Federal government, nor because it was subsidized by it, nor because it is employed by the Federal government, wholly or in part, unless it is really an agency or instrumentality for the exercise of the constitutional powers of the United States.'"

We quote further from the last cited case, the following:

"On the other hand the supreme court has also said:

"'It is apparent that not every person who uses his property or derives a profit, in his dealings with the government, may clothe himself with immunity from taxation on the theory that either he or his property is an instrumentality of government within the meaning of the (immunity) rule.' Metcalf & Eddy v. Mitchell, 269 U. S. 514, 522, 523, 46 S. Ct. 172, 174, 70 L. Ed. 384.

"In the same case it was said:

"'Just what instrumentalities of either a state or the Federal government are exempt from taxation by the other cannot be stated in terms of universal application. . . .

"'As cases arise, lying between the two extremes, it becomes necessary to draw the line which separates those activities having some relation to government, which are nevertheless subject to taxation, from those which are immune. Experience has shown that there is no formula by which that line may be plotted with precision in advance. But recourse may be had to the reason upon which the rule rests, and which must be the guiding principle to control its operation.'"

We conclude that the appellant is not exempt from the documentary stamp taxes by reason of the provisions of the Federal Statute, 12 U. S. C. A. 1433, nor is it such a

Federal instrumentality or agency entitling it to exemption from the taxes herein assessed by the respondent.

The appellant was organized under the provisions of the "Home Owners' Loan Act of 1933", enacted June 13, 1933, 12 U. S. C. A. 1464. It is provided in 12 U. S. C. A. 1464 (h) that:

> [fol. 24] "Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States, and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

The foregoing statute gives to a Federal Savings & Loan Association exemption from taxation by the state, or lesser taxing authority, with respect to its franchise, capital, reserves, surplus, loans and income, but permit taxation of such association by the State, or a lesser taxing authority, no greater than that imposed by such authority on other similar institutions.

It seems clear to us that if Congress did not intend to permit the taxation by the State and the lesser taxing authority to the extent and within the limits of 12 U. S. C. A. 1464 (h), it would not have found it necessary to have passed such an Act when there was already in existence the Federal Statute, 12 U. S. C. A. 1433, which, under the position taken by the appellant, would prevent taxation of the notes executed by it.

The purpose of the restrictive provision contained in 12 U. S. C. A. 1464 (h), providing that a Federal Savings and Loan Association shall not be taxed greater than that imposed on similar local institutions, was to prevent any unfair discrimination against said Federal Savings and

Loan Association in matters of State taxation in favor of local institutions carrying on a similar business. Accordingly, a Federal Savings and Loan Association can be taxed only to the same extent that local Building and Loan Associations are taxed. Cf. Section 8-610, of the 1952 Code of Laws of South Carolina.

In 84 C. J. S., Taxation, Section 157, at page 314, it is said:

> "In view of the statute relating to federal savings and loan associations and providing that no state, territorial, county, municipal, or local taxing authority shall impose any tax on such associations, or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or co-operative thrift and home financing institutions, 12 U. S. C. A., para. 1464 (h), federal associations are taxable to the same extent as state institutions. Such an association is a financial institution within the meaning of a state statute relating to the taxation of financial, mercantile, manufacturing, and business corporations."

In the case of State v. Minnesota Federal Savings and Loan Ass'n, 218 Minn. 220, 15 N. W. (2d) 568, it was held that a Savings and Loan Association, incorporated under 12 U. S. C. A. 1464 (a), is an instrumentality of the United States and free from taxation except to the extent permitted by Congress. It was also held that allowing State Building and Loan Associations credit against their net taxable income for interest and dividends paid to their members was void as discriminating against Federal Savings and Loan Associations, in violation of the tax uniformity provision of the Minnesota Constitution and 12 U. S. C. A. 1464 (h), which prohibits a State from imposing higher taxes on such Federal Associations than on other similar local mutual or cooperative thrift and home financing institutions.

In the case of First Federal Savings and Loan Ass'n of Altadena v. Johnson, 49 Cal. App. (2d) 465, 122 P. (2d) 84, it was held that a Federal Savings and Loan Associa-

tion was not exempt from State franchise taxes because it did not hold a franchise from the State, and that in view of the provisions of 12 U. S. C. A. 1464 (h), the State may impose on a Federal Savings and Loan Association a franchise tax computed on the basis of annual net income derived from investments of both local and federal funds, where the tax is not greater than that levied on a similar State institution.

[fol. 25] We think that the provisions of 12 U. S. C. A. 1464 (h) are clear, unambiguous and unequivocal in permitting the imposition of a documentary stamp tax on promissory notes executed by Federal Savings and Loan Associations when such is no greater than that imposed by the respondent on similar local Building and Loan Associations. We think that by the very terms of the statute, Congress has permitted to the States and the lesser taxing authority the specific right to tax a Federal Savings and Loan Association, but to no greater extent, however, than that with respect to similar local institutions.

We conclude that the respondent, by virtue of the provisions of 12 U. S. C. A. 1464 (h), has properly assessed and collected the South Carolina documentary stamp taxes here involved, the Congress having expressly granted to the taxing authority the right to impose and collect such.

The exceptions of the appellant are overruled and the judgment of the lower Court is affirmed.

Stukes, C. J., Taylor, Oxner and Legge, JJ., concur.

[fol. 26]

SUPREME COURT OF THE UNITED STATES

October Term, 1959

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—May 2, 1960

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 4th, 1960.

Earl Warren, Chief Justice of the United States.

Dated this 2nd day of May, 1960.

[fol. 27]

SUPREME COURT OF THE UNITED STATES

No. 126, October Term, 1960

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION,
Petitioner,

vs.

SOUTH CAROLINA TAX COMMISSION, et al.

ORDER ALLOWING CERTIORARI—October 10, 1960

The petition herein for a writ of certiorari to the Supreme Court of the State of South Carolina is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 28]

SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 126

[Title omitted]

On Writ of Certiorari to the Supreme Court of South Carolina

STIPULATION AS TO PARTS OF THE RECORD TO BE PRINTED —Filed October 31, 1960

It is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled cause that: the printed record shall consist of the following:

1. The entire record as printed for the use of the Supreme Court of South Carolina, copies of which have already been furnished to the Clerk of the Supreme Court of the United States;
2. The opinion and judgment of the Supreme Court of South Carolina (printed as Appendix A to the Petition for Certiorari);
3. The petition for rehearing in, and denial thereof by, the Supreme Court of South Carolina (printed as Appendix B to the Petition for Certiorari);
4. Order Extending Time to File Petition for Writ of Certiorari (printed as Appendix C to the Petition for Certiorari);
5. Order Granting Writ of Certiorari; and
6. This stipulation.

Frank K. Sloan, Ernest L. Folk, III, Counsel for Petitioner.

James M. Windham, Counsel for Respondent.

October 25, 1960.

FILE COPY

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Supreme Court of the United States

OCTOBER TERM, 1959

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, PETITIONER,

versus

SOUTH CAROLINA TAX COMMISSION, AND OTIS W. LIVINGSTON, CHAIRMAN, ET AL., RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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Supreme Court of the United States

OCTOBER TERM, 1959

No. .....

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, PETITIONER,

versus

SOUTH CAROLINA TAX COMMISSION, AND OTIS W. LIVINGSTON, CHAIRMAN, ET AL., RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

The petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of South Carolina entered in the above cause on February 5, 1960.

OPINION BELOW

The Opinion and order of the Supreme Court of South Carolina (Appendix A, *infra*, pp. 19-27.) is reported at 112 S. E. (2d) 716.

JURISDICTION

The judgment of the court below, contained in the opinion (Appendix A, *infra*, p. 27), was entered on February 5, 1960. A timely petition for rehearing was denied on February 26, 1960 (Appendix B, *infra*, p. 28). The time for filing for writ of certiorari was extended by Mr. Chief Justice Warren on May 2, 1960, to June 4, 1960 (Appendix C,

infrg. p. 29). The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3) and 2101 (e).

QUESTION PRESENTED

Whether South Carolina may tax the "note or obligation" required by Federal law (12 U. S. C. 1430 (c)) to secure Federal Home Loan Bank "advances" which are specifically exempted from State taxation by 12 U. S. C. 1433.

STATUTES INVOLVED

Section 10 of the Federal Home Loan Bank Act of 1932, 47 Stat. 731, 12 U. S. C. 1430, as amended, provides in pertinent part as follows:

> (a) Each Federal Home Loan Bank is authorized to make advances to its members upon the security of home mortgages, or obligations of the United States, or obligations fully guaranteed by the United States, subject to such regulations, restrictions, and limitations as the Board may prescribe. • • •
>
> (c) Such advances shall be made upon the note or obligation of the member or nonmember borrower secured as provided in this section, bearing such rate of interest as the board may approve or determine, and the Federal Home Loan Bank shall have a lien upon and shall hold the stock of such member as further collateral security for all indebtedness of the member to the Federal Home Loan Bank. • • •

Section 13 of the Federal Home Loan Bank Act of 1932, 47 Stat. 735, 12 U. S. C. 1433, as amended provides:

> Any and all notes, debentures, bonds, and other such obligations issued by any bank, and consolidated Federal Home Loan Bank bonds and debentures, shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing

authority. The bank, including its franchise, its capital, reserves, and surplus, its advances, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that in [*sic*] any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The notes, debentures, and bonds issued by any bank, with unearned coupons attached, shall be accepted at par by such bank in payment of or as a credit against the obligation of any homeowner debtor of such bank.

Section 5 (h) of the Home Owners Loan Act of 1933, 48 Stat. 133, 12 U. S. C. 1464 (h) as amended, provides:

(h) Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of Title 26 with respect to wages paid after December 28, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes), and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.

Section 65-688 of the Code of Laws of South Carolina of 1952 provides as follows:

The tax on promissory notes, except bank notes issued for circulation and executory contracts for the

payment of money which are executed or carried out in an instrument of writing to which documentary stamps are affixed, non-negotiable notes, written obligations to pay money, except as may otherwise be provided for in this chapter, assignments of salaries, wages or other compensation and mortgages which incorporate the certificate of indebtedness not otherwise shown in a separate instrument, and each renewal of any thereof, shall be for a sum not exceeding one hundred dollars, four cents and for each additional one hundred dollars, or fractional part thereof, four cents:

STATEMENT

Petitioner, a Federal savings and loan association with its principal place of business at Laurens, South Carolina ("The Association") (R. 1, 3), was chartered pursuant to 12 U. S. C. 1464 (a), and is a member of the Federal Home Loan Bank of Greensboro, North Carolina ("The Bank") as required by 12 U. S. C. 1464 (f). Under protest, the Association paid State documentary taxes on the notes which (12 U. S. C. 1430 (e)) required it to issue in order to obtain Bank "advances". In this action petitioner sought, but was denied, recovery of the taxes paid.

In order to place in proper context the issue in the case, we summarize briefly the salient features of the Federal Home Loan Bank system and its relation to the Federal savings and loan associations.

The Federal Home Loan Bank System:[1] In 1932, Congress established the Federal Home Loan Bank system, which consists of the Federal Home Loan Bank Board ("the Board") (constituted pursuant to 12 U. S. C. 1437) and a number of Federal Home Loan Banks located in as many districts (see 12 U. S. C. 1423), including the Federal Home

[1] For a comprehensive account of the organization and activities of the Federal Home Loan Bank system, see 1959 ANN. REP. FEDERAL HOME LOAN BANK BOARD, esp. at 15-16, 49-51, 55-56.

Loan Bank of Greensboro, North Carolina. Upon its organization, each bank issued capital stock (12 U. S. C. 1426) to which various eligible savings and loan institutions (see 12 U. S. C. 1424) could subscribe and thus become "members" of the Bank (see 12 U. S. C. 1426 (c)). Upon incorporation, a Federal savings and loan association, such as petitioner, automatically becomes a member of the Bank of the district in which it is located (12 U. S. C. 1464 (f); see also 12 U. S. C. 1424), and petitioner is in fact a member of the Greensboro Bank (see R. 3, 4).[2]

In 1933, Congress authorized the establishment of "associations to be known as 'Federal Savings and Loan Associations'." They are intended to function as "local mutual thrift institutions in which people may invest their funds" and to facilitate "the financing of homes" (12 U. S. C. 1464 (a); see also 12 U. S. C. 1465). Such associations are capitalized through issuance of stock to shareholders (12 U. S. C. 1464 (b)), and through purchase by the United States of "preferred shares" (12 U. S. C. 1464 (q)), and "full-paid income shares" (12 U. S. C. 1646 (j)). The Federal associations' ordinary functions are to lend funds secured by their shares or by first mortgages upon homes (12 U. S. C. 1464 (c)), although an association may also be required to serve as a "fiscal agent of the Government" or as "agent for any other instrumentality of the United States" (12 U. S. C. 1464 (k)). The Federal Home Loan Bank Board supervises association activities, and may appoint a "conservator or receiver" of the association for various reasons including "unsafe or unsound operation" of the association (12 U. S. C. 1464 (d)).

Member and nonmember Bank borrowers, including Federal associations, are "entitled to apply in writing for

[2] A Federal savings and loan association may not unilaterally withdraw from its Bank membership, unlike other Bank members who may sever relations on six months notice. 12 U. S. C. 1426 (i).

advances" from the Bank. (12 U. S. C. 1429). Such "advances" "shall be made upon the note or obligation" of the borrower (12 U. S. C. 1430 (c)), and are ordinarily secured by home mortgages or by Government issued or guaranteed obligations (12 U. S. C. 1430 (c); see also 1430 (b)). A member securing such an "advance" shall enter into a primary and unconditional obligation to repay it with interest and costs, etc. (12 U. S. C. 1430 (d)).

"Advances" [3] by the Bank are "exempt from all taxation, now or hereafter imposed * * * by any State, county, municipality, or local taxing authority," as well as from Federal taxation. 12 U. S. C. 1433. As for Federal associations, 12 U. S. C. 1464 (h) forbids any "State, Territorial, county, municipal, or local taxing authority" to impose a discriminatory tax upon "such associations or their franchise, capital, reserves, surplus, loans or income * * *." Associations are (with minor exceptions) relieved of all Federal taxation.

Laurens Federal Savings & Loan Association: Petitioner is a duly organized member Association of the Greensboro Federal Home Loan Bank. Between August 12, 1953, and October 7, 1957 (R. 7), it secured ten advances aggregating $5,675,000.00 from the Greensboro Bank, each time executing for the advance the required promissory note secured by home mortgages.

South Carolina, like various other states, imposes a documentary stamp tax upon promissory notes given by borrowers. S. C. Code 65-688. Respondent South Carolina Tax Commission assessed taxes of $2,270.00 upon the "notes" given by petitioner to the regional Federal Home Loan Bank at Greensboro, North Carolina. Petitioner paid

[3] Besides "advances", 1433 also forbids local taxation on "[t]he Bank, including its franchise, its capital, reserves, and surplus * * * and its income * * *." However, 1433 provides one exception to the general interdiction on local taxation, by specifically permitting local taxes on the Bank's real property.

the tax, under protest, and timely filed suit in the Court of Common Pleas of Laurens County to recover the amount of the tax, claiming in its complaint (R. 3-7), that the South Carolina documentary stamp tax is "in direct violation of the tax exemption granted this plaintiff and the Federal Home Loan Bank of Greensboro by the Federal Home Loan Bank Act, 12 U. S. C. A. 1421 *et seq.* • • • (R. 6). Respondent's Answer (R. 8-9) asserted the state tax to be "just, legal and proper and specifically authorized by the • • • Home Owners Loan Act of 1933, more specifically, 12 U. S. C. A. 1464 (h)" (R. 8). The trial court held (R. 9-13), and the Supreme Court of South Carolina affirmed the holding (Appendix A, *infra*, at p. 27), that the tax was authorized by Federal law.

The State Court Opinion: The Court concluded that the language of Section 1433 granting "immunity • • • from taxation applies only to the Federal Home Loan Bank" (*id., infra,* at p. 22), and that South Carolina had "not sought to place any documentary tax" upon the Bank but had assessed it only against petitioner (*id., infra,* at p. 22). The opinion distinguished this Court's decision in *Pittman v. Home Owners Loan Corp.*, 308 U. S. 21 (1939)—which invalidated a Maryland documentary tax on a mortgage securing a HOLC loan and offered for recordation by HOLC—as "not applicable under the factual situation here" on the theory that the *Pittman* mortgage "was offered for record by the Home Owners' Loan Corporation" and not by the borrower association (*id., infra,* at p. 23).

REASONS FOR GRANTING THE WRIT

This case presents an issue which is of substantial and continuing public concern in the administration of an important Federal statute, and which has not been precisely decided by this Court. The Supreme Court of South Caro-

lina has determined the question contrary to applicable decisions of this Court. Since The State Court's ruling is based wholly upon its construction of Federal statutes, review by this Court will, therefore, require no interpretation or application of State statutes or common law. Finally, this petition affords petitioner its sole opportunity to obtain Federal court determination of a Federal issue of significance both to petitioner, to the industry, and to the public generally.

1. Section 13 of the Federal Home Loan Bank Act, 47 Stat. 725 at 735, 12 U. S. C. 1433, provides that "advances" by the Federal Home Loan Bank "shall be exempt from all taxation now or hereafter imposed * * * by a State, county, municipality, or local taxing authority." Section 10 authorizes the Bank "to make advances to its members", including associations such as petitioner, only "upon the note or obligation of the member * * * borrower" (12 U. S. C. 1430 (c)), and upon proper security (12 U. S. C. 1430 (a)). Since South Carolina has imposed a documentary tax upon the statutorily required "note or obligation", it is an indirect, though none the less forbidden tax upon the "advance" itself, since the "note or obligation" without which an "advance" could not be made by the Bank, is a part of the entire loan transaction. The tax itself is precisely determined by the amount of the "advance" since the association's "note or obligation" is given for the "advance" which the Bank makes to it.

On these questions, this Court's unanimous[1] decision in *Pittman v. Home Owners Loan Corp.*, 308 U. S. 21 (1939) is conclusive. That case sustained an injunction against a recording tax imposed upon mortgages issued as security for loans by the Home Owners Loan Corporation, a now

[1] Except for Mr. Justice Butler who did not participate in the case. 308 U. S. at 33.

abolished subsidiary of the Federal Home Loan Bank Board.[5] The statute (Section 4 (c) of the Home Owners Loan Act of 1933)[6] which was held to invalidate the state tax provided that "[t]he Corporation, including * * * its loans * * * shall likewise be exempt from such taxation", *i. e.* "from all taxation * * * now or hereafter imposed * * * by any State, county, municipality, or local taxing authority." This Court held that it was immaterial who paid the tax, since "whoever pays it it is a tax upon the mortgage, and that is what is forbidden by the law of the United States" (308 U. S., at 31). In construing the statute, the Court regarded the word "loans" as the "critical term" and held that "in order to carry out the manifest purpose of the broad exemption" from State taxation, the term "should be construed as covering the entire process of lending, the debts which result therefrom, and the mortgages given to the Corporation as security" (*Id.* at 31), since "[b]oth the mortgage and its recordation were indispensable elements in the lending operations authorized by Congress" (*Id.* at

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[5] Congress, as an emergency measure, in 1933 authorized the Federal Home Loan Bank Board to organize the Home Owners Loan Corporation. (See the Act's preamble, 48 Stat. 128, and Section 4(a), 48 Stat. 129). The Corporation stood in substantially the same relation to the Board as the Federal Home Loan Banks except that eligible "member" savings and loan associations subscribed to Bank stock, while the Secretary of the Treasury underwrote the Corporation. Section 4(b), Stat. 129. The Corporation was eventually abolished as a separate entity in the reorganization of the Executive Department of the Government. See the statutory references collected in the note to 12 U. S. C. 1463.

[6] Section 4(c), 48 Stat. 128 at 130 (see also 48 Stat. 643 at 644), 12 U. S. C. 1463(c) (1946 ed.), provided as follows:

The bonds issued by the Corporation under this subsection shall be exempt both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any District, Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The Corporation, including its franchise, its capital, reserves and surplus, and its loans and income, shall likewise be exempt from such taxation; except that any real property of the Corporation shall be subject to taxation to the same extent, according to its value, as other real property is taxed. (This section is quoted in the *Pittman* decision, 303 U. S. 21 at 31,n.3.)

32). See also *Federal Land Bank v. Crosland*, 261 U. S. 374 (1923).

The decision of the Supreme Court of South Carolina directly conflicts with the principles enunciated in *Pittman*, and, indeed, with *Pittman's* holding insofar as this Court has held that the mortgage and loan must all be considered part of a single transaction. The two Federal statutes are identical except that the term "advances" appears in 12 U. S. C. 1433 in the same position that "loans" occupied in Section 4 (c) of the Home Owners' Loan Act. This substitution of terms, however, does not affect the identity of meaning of the statutes, since "loans" and "advance" have the same meaning in the present context. Compare *Laflin & Rand Powder Co. v. Burkhardt*, 97 U. S. 110, 117 (1878).[7] Both statutes grant an equally "broad exemption" from State taxation. Like the "loans" in *Pittman*, the term "advances" in 1433 should be "construed as covering the entire process of lending" including "the debts which result therefrom" (308 U. S. at 31). Similarly, the "note or obligation" which Section 1433 requires for obtaining a Bank "advance"—like the mortgage required as security for an HOLC loan—is an "indispensable element in the [Bank's] lending operations authorized by Congress" (*Id. at* 32).

The South Carolina court sought to avoid *Pittman's* impact on the ground that since the mortgage in that case was "offered for record by" the HOLC, it is "readily apparent"

[7] "To 'advance' is to 'supply beforehand,' 'to loan before the work is done or the goods made.' This is the popular understanding of the language, as well as the accurate definition." *Laflin case*, 97 U. S. 110 at 117. "The term 'advance' is generally used to refer to a payment of money before it is due * * *" (*Commissioner v. Drave*, 119 F. (2d) 97, 100 (3d Cir. 1940)), and "unquestionably, it may have the meaning of a loan if * * * used in connection with a promise, express or implied to repay that money" (*Socony Vacuum Oil Co. v. C. M. Johnston & Sons*, 103 F. (2d) 275, 278 (8th Cir. 1939)). See generally, 2A Words and Phrases 117-119 (Perm. Ed. 1955), and 1 Oxford English Dictionary 113 (1933) under "Advance" (vb. and n. [8]).

that *Pittman*" is not applicable under the factual situation here" (Appendix A, *infra* at p. 23). But the short answer to this contention is that "whoever pays it" [the tax]—whether the Bank which makes the "advances", or petitioner who can secure such "advances" only upon its "note or obligation" (Section 1430)—"it is a tax upon" the Bank's tax-exempt "advances", and "that is what is forbidden by the law of the United States."[9] *Pittman case, supra,* at 31; *Federal Land Bank v. Crosland,* 261 U. S. 374, 378-379 (1923).[9]

2. Contrary to the holding of the South Carolina court, Section 13 of the Home Owners' Loan Act of 1933, 12 U. S. C. 1464 (h), does not authorize the present tax which, as we have shown (*supra,* pp. 8-10), is invalid under Section 1433 and the *Pittman* decision.

The Home Owners' Loan Act established Federal savings and loan associations and relieved them of all State taxes except those specifically authorized by Section 13,[10] which permits nondiscriminatory imposts upon an association's "franchise, capital, reserves, surplus, loans [and] income." This section, on its face, does not authorize State taxes upon transactions between associations and the original Federal Home Loan Banks of which they are members.[11] Nor, absent clear Congressional consent, should this language be read as sanctioning a State tax which in substance

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[9] This similarly meets the South Carolina's court's suggestion that the *Pittman* "tax was sought to be imposed against the corporation which was immune from such tax by reason of the Federal Statute" (Appendix A, *infra* at p. 23).

[9] Although the South Carolina court, in sustaining the tax, observed that petitioner is not "such a Federal instrumentality or agency entitling it to exemption" (Appendix A, *infra* at p. 24), we do not argue this point, as it is clear that 12 U. S. C. 1433 blocks an indirect, though nonetheless effective, State tax upon Federal Home Loan Bank advances.

[10] *State v. Minnesota Fed. Savings & Loan Ass'n,* 218 Minn. 229 at 238, 15 N. W. (2d) 568 at 573 (1944): "An association is free from taxation by states except to the extent that Congress may permit it."

[11] Section 1464(h) consent to tax "associations or their • • • loans" refers to loans made by associations to *their* borrowers (such as home purchasers) and clearly not to transactions between the Bank and the association.

falls upon Bank "advances" specifically exempt under Section 1433, and which taxes only in form the "note or obligation" required for an association to obtain Bank loans. Moreover, such reading would plainly thwart "the manifest purpose of the broad exemption" of Section 1433 which, as *Pittman* recognized (308 U. S. at p. 31), "should be construed as covering the entire process of lending" between Bank and association. Finally, there is no legislative history to show that Congress intended, either in the original enactment of Section 1464 or in any of the amendments to it, to validate such taxes as South Carolina has imposed here."[12]

Under these circumstances we submit that the State court erred in holding that the "provisions of 12 U. S. C. A. 1464 (h) are clear, unambiguous and unequivocal" and that "Congress [has] expressly granted to the [State] taxing authority the right to impose and collect such" taxes as South Carolina assessed here. The fact stressed by the court (see Appendix A, *infra* at p. 25) that the tax is nondiscriminatory is beside the point, since no State tax, discriminatory or not, is valid unless Secton 1464 (h) permits it.

3. The State court's ruling also frustrates basic Congressional policy.

A major objective of the Home Owners' Loan Act of 1933 is to establish "local mutual thrift institutions in which people may invest their funds" and "to provide for the financing of homes." 44 Stat. 132, 12 U. S. C. 1464 (a);

[12] Although no less than nine amendments or revisions of Section 1464 occurred after *Pittman*, Congress did not at any time disapprove that decision, or attempt either here or elsewhere to endorse State taxes of the kind outlawed by *Pittman*. These revisions are listed in the "Note" to Section 1464 in the United States Code. Subsection (h) was itself amended in 1951 (65 Stat. 490). It previously had been amended in August 1939 (53 Stat. 1402), prior to the *Pittman* decision in November 1939 (see 308 U. S. 21), but four months after the grant of certiorari on April 17, 1939 (306 U. S. 628) and long after the Maryland decision on December 1, 1938 (175 Md. 512, 2 A. (2d) 689) which this Court unanimously affirmed.

see also 48 Stat. 134, 12 U. S. C. 1465. Federal savings and loan associations are thus "created, insured and aided by the Federal Government" (*Fahey v. Mallonee*, 332 U.S. 245, 250 (1947)) as a part of "a comprehensive legislative program" promoting home ownership and implemented by "large appropriations" from Congress (*Fahey v. O'Melveny & Myers*, 200 F. (2d) 420, 465 (9th Cir. 1952)); their "close financial relationship" with the Government reflects their "many special privileges and advantages" and "peculiar status" under the Federal "legislative scheme" (*id.* at 465).

Such taxes as South Carolina and other states have imposed interfere with these efforts to make home financing opportunities widely available at minimal cost to the ultimate borrower.[13] In the aggregate, the taxes are substantial in amount (see *infra* at p. 15). Moreover, the taxes, measured as they are by the dollar amount of the Bank "advances" for which the association gives its "note or obligation," are, as we have shown, in effect indirect imposts upon the Bank's "advances"; and "that is what is forbidden by the law of the United States (*Pittman case, supra*, at 31). In all events, the taxes are necessarily passed on by the associations in the form of increased home-financing costs to their homeowner-borrowers, contrary to the Congressional purpose of securing low net borrowing costs to the ultimate borrower. In the light of these clear policy objectives, which the State court altogether ignored, Section 1464 (h)'s limitation upon association tax-immunity should not be needlessly stretched to sustain State taxes which are not fairly authorized by the language of 1464.

[13] The maintenance of low net cost to the ultimate homeowner-borrower is also reflected in 12 U. S. C. 1425 which excludes or expels from Bank membership, and denies all borrowing privileges to, any institution whose total charges (less specified deductions) "create an actual net cost to the home owner" exceeding lawful interest rates.

4. Finally, the question presented is one of substantial and continuing public importance. The lower court's decision is a general determination that Congress has validated State documentary stamp taxes upon borrowing transactions between Federal Home Loan Banks and their member institutions, including Federal savings and loan associations such as petitioner. Besides South Carolina, Pennsylvania [14] and Florida [15] also provide for, and presumably are collecting, such taxes. It seems reasonable to assume that other States will not long overlook this source of additional revenue if the present tax is upheld.

The aggregate dollar volume of South Carolina's taxes on association transactions with the Greensboro Bank is substantial, and will likely increase in the future as the volume of advances continues its upward trend.[16] For petitioner alone, a median-size institution,[17] the State tax on its notes to the Greensboro Bank amounted to $2,270.00 for the four-year period August 12, 1953—October 7, 1957. Besides petitioner, in South Carolina there are 42 Federal and 27 State chartered associations [18] all of which are members of the Greensboro Bank and whose borrowing transactions with the Bank are therefore subject to South Carolina's documentary stamp tax. As of December 31, 1959, outstanding advances from the Greensboro Bank to its 70 South

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[14] Purdon's Penna. Stats. Ann. §72-203(p) (1949).

[15] Fla. Stats. §201.08(1) (1955).

[16] See 1959 Ann. Rep. Federal Home Loan Bank of Greensboro (hereinafter cited as "Ann. Rep. (Greensboro)") at 10-11; see also 1958 Ann. Rep. (Greensboro) at 10-11.

[17] As measured by its assets of $7.5 million on December 31, 1958. Of the State's 43 federal associations (see note 18 *infra*) 15 are larger than petitioner, including 6 institutions with assets ranging from $20 to over $35 million; 27 federal associations are smaller in assets. Statistics furnished by the South Carolina Savings and Loan League, Columbia, S. C.

[18] See 1959 Ann. Rep. (Greensboro) at 6. The number has steadily grown. For 1958, there were 42 federal and 25 state association members (1958 Ann. Rep. (Greensboro) at 6); and for 1957 the corresponding figures were 41 and 22 respectively (1957 Ann. Rep. (Greensboro) at 10).

Carolina member associations amounted to $21,076,000;[19] on the "note[s] or obligation[s]" required by 12 U. S. C. 1430 (c) to obtain these advances, the State tax payable amounts to $8,430.40. Indeed, the total tax paid and payable is substantially understated, since the dollar volume of Bank advances throughout an entire calendar year—including both new advances and renewals, both of which are subject to South Carolina's tax—is considerably larger than the volume of advances outstanding on a given date.[20]

For the Greensboro Bank's area as a whole, as well as in South Carolina, in 1959 "[a]ssociations turned to the Bank more often, and in greater dollar volume, than ever before to help them meet their loan demands." [21] 1959 Ann. Rep. (Greensboro) at 4.

Finally, the adverse impact of such unauthorized exactions is likely to be increased by prevailing industry conditions in the Greensboro Bank's district. In the last several years, the operating expenses of member associations have substantially increased relative to operating income, both for the district as a whole (1959 Ann. Rep. (Greensboro) at 18-19) and for South Carolina (*Id.* at 14-15). In addition, member associations faced and continue to encounter a

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[19] This figure appears in 1959 Ann. Rep. (Greensboro) at 14-15. The upsurge in borrowing transactions between the Bank and its South Carolina member associations is notable. On December 31, 1958, advances outstanding were $5,730,000 (1958 Ann. Rep. (Greensboro) at 14-15) [illegible] for December 31, 1957, it was $8,621,500 (1957 Ann. Rep. (Greensboro) at 8-9).

[20] Thus, as of December 31, 1959, the Greensboro Bank had, for the entire district, outstanding advances of $234,430,250. 1959 Ann. Rep. (Greensboro) at 12; see also 1959 Ann. Rep. Federal Home Loan Bank Board at 57. But the District's aggregate volume of advances for 1959 was $217,300,000 in "new advances", and $115,500,000 in "renewals", for a total of $332,800,000. 1959 Ann. Rep. (Greensboro) at 5. The aggregate volume of "new advances" and "renewals" is not available on a state-to-state basis, as are the figures cited for advances outstanding on the last day of the calendar year. Nor is there a state-to-state breakdown of the volume of advances to federal and to state-chartered association members, although for the nation as a whole the federal-state ratio is roughly 3 to 2. 1959 Ann. Rep. FHLB Board at 18.

[21] The same was true in 1959 for the System as a whole. 1959 Ann. Rep. FHLB Board at 1.

"tremendous home loan demand" (*Id.* at 3), a sharp rise during 1959 of interest rates (from 3% to 5%) on Bank advances (*Id.* at 5), and as a result 1960's "most pressing problem," a severe "income squeeze" (*Id.* at 8). This latter is due to the fact that most associations, which must continue to pay dividends on their depositors' savings, have reached the legal or competitively imposed limit of interest rates they can charge their homeowner-borrowers—their chief income source. In consequence, less money is available for the "loss reserves" needed to safeguard their depositors' savings (*Ibid.*).[22] Against this background, the economic impact of documentary taxes on Association-Bank transactions is greatly magnified, to the point where, realistically, they can seriously handicap the Congressional program of promoting financially sound, low-cost home financing institutions. These facts demonstrate the continuing importance of this issue of Federal law, and the desirability of its early resolution by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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Of Counsel.

June 3, 1960.

[22] "Those who have accepted the responsibility of handling the savings of millions of people have also accepted the obligation of safeguarding these savings by building or maintaining adequate loss reserves." 1959 Ann. Rep. (Greensboro) at 8.

APPENDIX A

OPINION AND JUDGMENT OF THE SUPREME COURT OF SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

LAURENS FEDERAL SAVINGS & LOAN ASSOCIATION, Appellant,

versus

SOUTH CAROLINA TAX COMMISSION and OTIS W. LIVINGSTON, Chairman, JAMES W. CRAIN, JAMES H. SULLIVAN, J. A. CALHOUN, JR., FRANCIS M. PINCKNEY, Constituting the Members of the S. C. Tax Commission, Respondents.

Appeal from Laurens County
C. Bruce Littlejohn, Judge

Case No. 4535
Opinion No. 17609
Filed February 5, 1960
AFFIRMED

MOSS, A. J.: This action was brought under the provisions of Section 65-2661-2 of the 1952 Code of Laws of South Carolina by the appellant, Laurens Federal Savings and Loan Association, against the South Carolina Tax Commission, to recover documentary stamp taxes in the amount of $2,270.00, which appellant paid under protest. The assessment for documentary stamps against the appellant was on ten promissory notes executed by it to the Federal Home Loan Bank of Greensboro, North Carolina, such assessment being made pursuant to Section 65-688 of the 1952 Code of Laws of South Carolina, which imposes on promissory notes a stamp tax of 4 cents on each $100, or fractional part thereof.

The appellant is a Federal Savings and Loan Association, chartered pursuant to the provisions of an Act of Congress known as the "Home Owners' Loan Act of 1933", enacted into law June 13, 1933, as amended, 12 U. S. C. A. 1464, for the purpose of encouraging thrift and home ownership within the area it serves. The Federal Home Loan Bank of Greensboro, North Carolina, was created under an Act of Congress, known as the "Federal Home Loan Bank Act", enacted July 22, 1932, 12 U. S. C. A. 1421, *et seq.*, for the purpose, *inter alia*, for directing and controlling the flow of mortgage money to member and non-member direct-lending institutions by way of advances of credit. A state-chartered building and loan association or similar institution making home mortgage loans may qualify as a non-member borrower of the Bank upon meeting the conditions set forth in the Federal Home Loan Bank Act, specifically 12 U. S. C. A. 1424; upon meeting the requirements of a non-member borrower; a state-chartered building and loan association may secure advances of credit from the Federal Home Loan Bank of Greensboro as does appellant, the latter being a member of the Bank by virtue of its incorporation under the Home Owners' Loan Act of 1933.

It is provided in 12 U. S. C. A. 1430 (a) that the Federal Home Loan Bank is authorized to make advances to its members upon the security of home mortgages, and in Section (c) of said Statute, that such advances shall be made upon the note or obligation of the member or non-member borrower. It was upon ten such notes that the respondent imposed a documentary stamp tax as provided by Section 65-688 of the 1952 Code of Laws of South Carolina. The appellant paid the documentary stamp taxes so assessed upon protest and timely brought this action to recover such.

In the lower Court the appellant contended that the respondent could not legally assess and collect the stamp taxes involved in this action because of the provisions of 12 U. S. C. A. 1433, which operates to preclude the taxation of the promissory notes executed by the appellant. The respondent contends that the provisions of 12 U. S. C. A. 1464 (h) specifically authorize the taxes.

There being no material disagreement as to the facts, the appellant moved before the Honorable C. Bruce Littlejohn, the Presiding Judge, for judgment on the pleadings. Judge Littlejohn held that the stamp tax assessment as made by the respondent was legal and the appellant was not entitled to the claimed refund. This appeal followed.

The question to be determined upon this appeal is whether the respondent, by virtue of the provisions of 12 U. S. C. A. 1464 (h), can legally subject the promissory notes given by the appellant to the Federal Home Loan Bank of Greensboro, North Carolina, to South Carolina documentary stamps, or is it precluded from so doing by virtue of the provisions of 12 U. S. C. A. 1433.

The complaint in this action alleges that the promissory notes of the appellant to the Federal Home Loan Bank of Greensboro, North Carolina, were executed at Laurens, South Carolina, the place of business of the appellant. It was held in the case of *Graniteville Mfg. Co. v. Query, et al.*, 44 F. (2d) 64, affirmed on appeal to the United States Supreme Court, 283 U. S. 376, 51 S. Ct. 515, 75 L. Ed. 1126, that South Carolina may validly impose a stamp tax upon promissory notes executed within the State though payable to banks at their places of business outside the State. Therefore, it follows that unless there is an appropriate exemption applying to the notes executed by the appellant, they should bear South Carolina documentary stamps as is fixed and required by Section 65-688 of the 1952 Code of Laws of South Carolina. There is no exemption under our documentary tax statute which would excuse the appellant from affixing the required stamps to its notes, even though such were executed to the Federal Home Loan Bank of Greensboro, North Carolina.

This Court has held that constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming an exemption, and he must, in order to be entitled to such exemption, clearly bring himself within the exemption on which he relies. *Textile Hall Corp. v. Hill*, 215 S. C. 262, 54 S. E. (2d) 809; *Arkwright Mills v. Murph*, 219 S. C. 438, 65 S. E. (2d) 665; and *M. B. Kahn Construction Co. v. Crain, et al.*, 222 S. C. 17, 71 S. E. (2d) 503.

There is no dispute between the parties to this action concerning the fact that the respondent, in imposing the documentary stamp taxes in question, does likewise impose the same kind of taxes and, at the same rate, with respect to notes executed by State chartered Building and Loan Associations to the Federal Home Loan Bank of Greensboro, North Carolina. The appellant contends, however, that any such tax is improper and unauthorized on the part of the respondent and relies upon the provisions of the aforementioned Federal Statute, 12 U. S. C. A. 1433. This statute was enacted on July 22, 1932, as a part of the Act creating the Federal Home Loan Bank, and with references to exemptions from taxation, provides:

> "* * * The bank, including its franchise, its capital, reserves, and surplus, its advances, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. * * *"

It is clear from the foregoing statute that the immunity provided therein from taxation applies only to the Federal Home Loan Bank. The respondent here has not sought to place any documentary tax upon the Federal Home Loan Bank but such has been assessed against the appellant. If the respondent has attempted to place a documentary tax upon some obligation issued by the Federal Home Loan Bank, then the above quoted statute would be applicable and such bank entitled to the immunity therein provided.

The appellant cites and relies upon the case of *Pittman v. Home Owners' Loan Corporation*, 308 U. S. 21, 60 S. Ct. 15, L. Ed. 11, where it was held that a tax imposed by a State statute upon every mortgage recorded or offered for record at the rate of 10 cents for every $100.00 of the principal amount of the debt secured, was not merely a fee for the privilege of recording the mortgage but was a tax on the mortgage itself, so as to be inapplicable to a mortgage

offered for record by the Home Owners' Loan Corporation, it being provided by the Act establishing such corporation, that its loan should be exempt from state and municipal taxation. We should emphasize that the mortgage sought to be taxed in the *Pittman case* was offered for record by the Home Owners' Loan Corporation. It is readily apparent that the rule there announced is not applicable under the factual situation here. We should also point out in the *Pittman case* that the tax was sought to be imposed against the corporation which was immune from such tax by reason of the Federal Statute.

The appellant asserts that a Federal Savings & Loan Association is an instrumentality or agency of the United States, and, as such, is exempt from State taxation. In the case of *Capitol Building & Loan Association, et al. v. Kansas Commission of Labor and Industry, et al.*, 148 Kan. 446, 83 P. (2d) 106, 118 A. L. R. 1212, an action was brought by a Building & Loan Association organized under Kansas law to determine whether it was exempt as a federal instrumentality from making contributions to the State Unemployment Compensation Fund. It was contended by the plaintiff that by virtue of their ownership of stock in the Federal Home Loan Bank and their consequent membership in its corporate entity, they themselves are federal instrumentalities and are exempt from making contributions to the Unemployment Compensation Fund. The Kansas Supreme Court, in rejecting the claim of the plaintiff, and holding the Building & Loan Association liable for the Unemployment Compensation Fund taxes, said:

> "The term 'Federal instrumentality' is not defined in our statutes, but it is a common one in the law books. An instrumentality is anything used as a means or agency. 32 C. J. 947. Therefore a Federal instrumentality is a means or agency used by the Federal government. In the law books the terms 'Federal agency' and 'Federal instrumentality' are used interchangeably. Thus in 2 Cooley on Taxation (4th ed.) 1300, it is said:
>
> "'A corporation cannot escape state taxation merely because it was created by the Federal govern-

ment, nor because it was subsidized by it, nor because it is employed by the Federal government, wholly or in part, unless it is really an agency or instrumentality for the exercise of the constitutional powers of the United States.'"

We quote further from the last cited case, the following:

"On the other hand the supreme court has also said:

"'It is apparent that not every person who uses his property or derives a profit, in his dealings with the government, may clothe himself with immunity from taxation on the theory that either he or his property is an instrumentality of government within the meaning of the (immunity) rule. *Metcalf & Eddy v. Mitchell*, 269 U. S. 514, 522, 523, 46 S. Ct. 172, 174, 70 L. Ed. 394.'

"In the same case it was said:

"'Just what instrumentalities of either a state or the Federal government are exempt from taxation by the other cannot be stated in terms of universal application * * *.

"'As cases arise, lying between the two extremes, it becomes necessary to draw the line which separates those activities having some relation to government, which are nevertheless subject to taxation, from those which are immune. Experience has shown that there is no formula by which that line may be plotted with precision in advance. But recourse may be had to the reason upon which the rule rests, and which must be the guiding principle to control its operation.'"

We conclude that the appellant is not exempt from the documentary stamp taxes by reason of the provisions of the Federal Statute, 12 U. S. C. A. 1433, nor is it such a Federal instrumentality or agency entitling it to exemption from the taxes herein assessed by the respondent.

The appellant was organized under the provisions of the "Home Owners' Loan Act of 1933", enacted June 13, 1933. 12 U. S. C. A. 1464. It is provided in 12 U. S. C. A. 1464 (h) that:

"Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States, and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

The foregoing statute gives to a Federal Savings & Loan Association exemption from taxation by the state, or lesser taxing authority, with respect to its franchise, capital, reserves, surplus, loans and income, but permit taxation of such association by the State, or a lesser taxing authority, no greater than that imposed by such authority on other similar institutions.

It seems clear to us that if Congress did not intend to permit the taxation by the State and the lesser taxing authority to the extent and within the limits of 12 U. S. C. A. 1464 (h), it would not have found if necessary to have passed such an Act when there was already in existence the Federal Statute, 12 U. S. C. A. 1463, which, under the position taken by the appellant would prevent taxation of the notes executed by it.

The purpose of the restrictive provision contained in 12 U. S. C. A. 1464 (h), providing that a Federal Savings and Loan Association shall not be taxed greater than that imposed on similar local institutions, was to prevent any unfair discrimination against said Federal Savings and Loan Association in matters of State taxation in favor of local institutions carrying on a similar business. Accordingly, a Federal Savings and Loan Association can be taxed only to the same extent that local Building and Loan Associations are taxed. Cf. Section 8-610, of the 1952 Code of Laws of South Carolina.

In 84 C. J. S., Taxation, Section 157, at page 314, it is said:

> "In view of the statute relating to federal savings and loan associations and providing that no state, territorial, county, municipal, or local taxing authority shall impose any tax on such associations, or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or co-operative thrift and home financing institutions, 12 U. S. C. A., para. 1464 (h), federal associations are taxable to the same extent as state institutions. Such an association is a financial institution within the meaning of a state statute relating to the taxation of financial, mercantile, manufacturing, and business corporations."

In the case of *State v. Minnesota Federal Savings and Loan Ass'n*, 218 Minn. 220, 15 N. W. (2d) 568, it was held that a Savings and Loan Association incorporated under 12 U. S. C. A. 1464 (a), is an instrumentality of the United States and free from taxation except to the extent permitted by Congress. It was also held that allowing State Building and Loan Associations credit against their net taxable income for interest and dividends paid to their members was void as discriminating against Federal Savings and Loan Associations, in violation of the tax uniformity provision of the Minnesota Constitution and 12 U. S. C. A. 1464 (h), which prohibits a State from imposing higher taxes on such Federal Associations than on other similar local mutual or cooperative thrift and home financing institutions.

In the case of *First Federal Savings and Loan Ass'n. of Altadena v. Johnson*, 49 Cal. App. (2d) 465, 122 P. (2d) 84, it was held that a Federal Savings and Loan Association was not exempt from State franchise taxes because it did not hold a franchise from the State, and that in view of the provisions of 12 U. S. C. A. 1464 (h), the State may impose on a Federal Savings and Loan Association a franchise tax computed on the basis of annual net income derived from investments of both local and federal funds, where the tax is not greater than that levied on a similar State institution.

We think that the provisions of 12 U. S. C. A. 1464 (h) are clear, unambiguous and unequivocal in permitting the imposition of a documentary stamp tax on promissory notes executed by Federal Savings and Loan Associations when such is no greater than that imposed by the respondent on similar local Building and Loan Associations. We think that by the very terms of the statute, Congress has permitted to the States and the lesser taxing authority the specific right to tax a Federal Savings and Loan Association, but to no greater extent, however, than that with respect to similar local institutions.

We conclude that the respondent, by virtue of the provisions of 12 U. S. C. A. 1464 (h), has properly assessed and collected the South Carolina documentary stamp taxes here involved, the Congress having expressly granted to the taxing authority the right to impose and collect such.

The exceptions of the appellant are overruled and the judgment of the lower Court is affirmed.

STUKES, C. J., TAYLOR, OXNER and LEGGE, J J., concur.

APPENDIX B

PETITION FOR REHEARING

The undersigned attorneys for appelfant respectfully petition this Honorable Court for a rehearing of the above entitled cause for the following reason:

That this Honorable Court misapprehended the holding of the U. S. Supreme Court in the cases of *Pittman v. Home Owners' Loan Corporation*, 308 U. S. 21, 60 S. Ct. 15, 84 L. Ed. 11, and *Federal Land Bank v. Crosland*, 261 U. S. 374, 43 S. Ct. 385, 67 L. Ed. 703, in that it failed to construe said opinions as holding that it matters not upon whom the State attempts to place the burden of a State Tax in regard to notes and/or mortgages given by or to the Federal Home Land Bank of Greensboro, N. C., or similar federal agencies.

The undersigned attorneys respectfully represent that there is no specific property involved in this cause which would be affected by a stay of the remittur.

Respectfully submitted,

/s/ W. HUMMEL HARLEY,
Laurens, South Carolina,
/s/ THOMAS H. POPE,
/s/ ROBERT D. SCHUMPERT,
/s/ REMBERT D. PARLER,
Newberry, South Carolina,
Attorneys for Petitioner-Appellant.

Newberry, South Carolina,
February 15, 1960.

Petition Denied.

/s/ T. H. STUKES, C. J.,
/s/ C. A. TAYLOR, A. J.,
/s/ G. DEWEY OXNER, A. J.,
/s/ LIONEL K. LEGGE, A. J.,
/s/ JOSEPH R. MOSS, A. J.

Supreme Court of South Carolina,
Clerk's Office, Columbia, S. C.
FILED
Feb. 26, 1960.

CERTIFICATE

I, Frances H. Smith, Clerk of The Supreme Court of the State of South Carolina, hereby certify that the documents hereto attached constitute the true and correct copies of original documents in this office:

1. Petition for rehearing with order of the Court refusing Petition endorsed thereon.
2. Opinion of the South Carolina Supreme Court, which opinion is the final judgment of this Court.

In witness whereof I have hereunto set my hand and seal this 3rd day of May, 1960.

/s/ FRANCES H. SMITH,
Clerk Supreme Court of
South Carolina.

[SEAL]

APPENDIX C

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1959

LAURENS FEDERAL SAVINGS & LOAN ASSOCIATION, PETITIONER,

versus

SOUTH CAROLINA TAX COMMISSION, *ET AL.*

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the Application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 4th, 1960.

/s/ EARL WARREN,
Chief Justice of the United
States.

Dated this 2nd
day of May, 1960.

COPY

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Supreme Court of the United States

OCTOBER TERM, 1959

No. [redacted] 126

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, PETITIONER,

versus

SOUTH CAROLINA TAX COMMISSION, AND OTIS W. LIVINGSTON, CHAIRMAN, ET AL., RESPONDENTS.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

QUESTION INVOLVED

Can the State of South Carolina, by virtue of the provisions of 12 U. S. C. 1464 (h), legally subject Petitioner to the assessment of documentary stamp taxes levied upon promissory notes executed by Petitioner in Laurens, South Carolina, to the Federal Home Loan Bank of Greensboro, North Carolina.

STATEMENT

Petitioner's statement is in the main fair and full and with the exception of the last paragraph under the sub-title "The Federal Home Loan Bank System" (Petition, p. 6), is endorsed by Respondent.

As to the paragraph excepted, the Statement disassembles the wording of 12 U. S. C. 1433 and 12 U. S. C. 1464 (h) and restates the statutes to advance Respondents' argumentative position. The Statutes involved are otherwise fully set forth in the Petition, hence are not recited herein.

ARGUMENT

The Petition in this matter presents no showing that the Supreme Court of South Carolina has decided a federal question of substance not theretofore determined by this Court, nor does it present a showing that the Supreme Court of South Carolina has decided a federal question of substance in a way probably not in accord with applicable decisions of this Court, nor does it present any sound reason for review by this Court.

The notes in question were executed in Laurens, South Carolina. The taxes assessed are by virtue of the provisions of Section 65-688 of the Code of Laws of South Carolina. South Carolina may validly impose a stamp tax upon promissory notes executed within the State although payable outside of the State. *Graniteville Mfg. Co. v. Query et al.*, 283 U. S. 376, 51 S. Ct. 515, 75 L. Ed. 1126.

To an extent, the Petitioner is an instrumentality of the Federal government, however, it is not such an instrumentality as *ipso facto* clothes it with immunity from taxation. Although *State v. Minnesota Federal Savings & Loan Association*, 218 Minn. 229, 15 N. W. (2d) 568, holds that an Association is free from taxation except as permitted by congress, this case goes further and sets forth the purpose of the statutory exemption provided to the Associations, as follows:

> "The act of Congress uses these words, 12 U. S. C. A., § 1464 (h): 'other similar local mutual or cooperative thrift and home financing institutions.' The purpose was to protect federal associations from discrimi-

natory taxation which would put them on any less favorable basis than state building and loan associations."

Other cases decided by this Court do not make so bold a statement as found in *State v. Minnesota Federal Savings & Loan Association*, as regards tax immunity of United States instrumentalities.

It was said in the case of *Metcalf & Eddy v. Mitchell*, 269 U. S. 514, 46 S. Ct. 172, 70 L. Ed. 384, as follows:

> "Just what instrumentalities of either a state or the Federal government are exempt from taxation by the other cannot be stated in terms of universal application. • • •
>
> "As cases arise, lying between the two extremes, it becomes necessary to draw the line which separates those activities having some relation to government, which are nevertheless subject to taxation, from those which are immune. Experience has shown that there is no formula by which that line may be plotted with precision in advance. But recourse may be had to the reason upon which the rule rests, and which must be the guiding principle to control its operation."

The recent case of *United States of America et al. v. City of Detroit*, 355 U. S. 466, 495, 78 S. Ct. 474, 486, 2 L. Ed. (2d) 424, 460, states as follows:

> "Today the United States does business with a vast number of private parties. In this Court the trend has been to reject immunizing these private parties from nondiscriminatory state taxes as a matter of constitutional law. Cf. *Penn-Dairies v. Milk Control Commission*, 318 U. S. 261, 270, 87 L. Ed. 748, 753, 63 S. Ct. 617. Of course this is not to say that Congress, acting within the proper scope of its power, cannot confer immunity by statute where it does not exist constitutionally. Wise and flexible adjustment of intergovernmental tax immunity calls for political and economic considerations of the greatest difficulty and delicacy. Such com-

plex problems are ones which Congress is best qualified to resolve. As the Government points out, Congress has already extensively legislated in this area by permitting States to tax what would have otherwise been immune."

In accord with the purposes and operation of Federal Savings & Loan Associations and in line with the applicable decisions of this Court, it seems readily apparent that Petitioner is not such a Federal instrumentality as entitles it to exemptions greater than specifically provided by statute.

The contention, that the assessed taxes are forbidden by Section 13 of the Federal Home Loan Bank Act of 1932, 47 Stat. 735, 12 U. S. C. 1433, is specious and does not stand the test of reason. No tax is assessed against the Bank and none paid by it, nor is the Bank a party to this action. The documentary stamp taxes assessed are, as stated in *Graniteville Mfg. Co. v. Query et al., supra*:

"• • • simply a tax levied in relation to an act done within the state in making an instrument."

The case of *Pittman v. Home Owners' Loan Corporation*, 308 U. S. 21, 60 S. Ct. 15, 84 L. Ed. 11, was properly distinguished by the Supreme Court of South Carolina. In the *Pittman case*, the Home Owners' Loan Corporation was itself assessed although the Corporation was immune from such tax by virtue of the Federal Statute, and was itself a party to the action, and itself offered for record the mortgage sought to be taxed. In the instant matter, patently, no tax is levied upon the bank, its advances, or against any asset of the bank or its advances. The tax is levied upon the petitioning Association in relation to an act done by it within the state in making an instrument.

The documentary stamp taxes assessed are precisely the same in kind and rate as are levied against State chartered Building and Loan Associations with respect to notes

executed to the Federal Home Loan Bank of Greensboro, North Carolina, and with respect to notes executed generally. The State chartered associations have the same laudable purposes as do Petitioner, yet Petitioner seeks an exceptional advantage.

Section 5 (h) of the Home Owners Loan Act of 1933, 48 Stat. 133, 12 U. S. C. 1464 (h) as amended, provides wholly for such tax exemptions as are to be enjoyed by Federal Savings & Loan Associations:

> "and no State * * * shall impose any tax on such associations * * * greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

The purpose of the provisions of 12 U. S. C. 1464 (h), patently was to prevent unfair discrimination against Federal Savings and Loan Associations in matters of State taxation. *State v. Minnesota Federal Savings & Loan Association, supra; First Federal Savings and Loan Association of Altadena v. Johnson*, 49 Cal. App. (2d) 465, 122 P. (2d) 84. Petitioner's contention is not only contrary to the provisions of the said Federal Statute, but is designed to discriminate against local mutual or cooperative thrift and home financing institutions, and secure to itself an unfair tax advantage.

CONCLUSION

There is no substantial Federal question presented in accordance with the requirements of Rule 19 of the Court governing review on writ of certiorari.

We therefore respectfully ask the Court to deny the writ.

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LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, PETITIONER

v.

SOUTH CAROLINA TAX COMMISSION, AND OTIS W. LIVINGSTON, CHAIRMAN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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Pursuant to Rule 42(4) of the Rules of this Court, the Solicitor General, on behalf of the United States, as *amicus curiae,* urges that the petition for a writ of certiorari in this case be granted.

Petitioner, a Federal Savings and Loan Association, executed and delivered to the Greensboro Federal Home Loan Bank a number of promissory notes for advances received from the Bank. The question is whether those notes were subject to the South Carolina documentary stamp tax or were exempt under 12 U.S.C. 1433 (§ 13, Federal Home Loan Bank Act, 47 Stat. 725, 735), which provides that "The

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bank [a Federal Home Loan Bank], including its franchise, its capital, reserves, and surplus, its advances, and its income shall be exempt from" state taxes. The Supreme Court of South Carolina held that the notes were taxable.

1. The decision below is contrary in principle to the decision of this Court in *Pittman* v. *Home Owners' Loan Corp.*, 308 U.S. 21. In that case the Court held that mortgages given to the Home Owners' Loan Corporation to secure loans from the Corporation were exempt from a state recordation tax under a statute providing that "The Corporation, including its franchise, its capital, reserves and surplus, and its loans and income, shall * * * be exempt from" state taxes (§ 4(c), Home Owners' Loan Act of 1933, 48 Stat. 130). The exemption of "loans" was construed "as covering the entire process of lending, the debts which result therefrom and the mortgages given to the Corporation as security" (308 U.S. at 31). The exemption provision in this case is substantially identical to that involved in *Pittman* except for the use of the word "advances" instead of "loans". That difference is insignificant, and just as the exemption of "loans" in *Pittman* was held to extend to the mortgages required to secure the loans, so must the exemption of "advances" be held to extend to the notes required to evidence the advances.

Nor can *Pittman* be distinguished, as the court below suggests, on the ground that the tax there was sought to be collected from the Corporation rather than, as here, from the borrower. The Court in

Pittman expressly rejected an analogous argument[1] and held it to be immaterial which party to the loan paid the tax, for "whoever pays it it is a tax upon the mortgage and that is what is forbidden by the law" (308 U.S. at 31).[2]

2. The question presented is of substantial and continuing importance. At least two other states have taxing statutes similar to South Carolina's (see 72 Pa. Stat. Ann. (Purdon 1949) §§ 203(p), 3250–10; Fla. Stat. (1959) § 201.08), and the decision

[1] That the tax was not imposed on the Corporation as such but only on the privilege of recording the mortgage, and was in fact customarily paid by the mortgagor. See 308 U.S. at 22, 30–31.

[2] The court below also relied on 12 U.S.C. 1464(h) (§ 5(h), Home Owners' Loan Act of 1933), which forbids state taxes on Federal Savings and Loan Associations greater than those imposed on other similar institutions. As we read its opinion, however, the court relied on that provision, not as an exception to the statutory exemption granted by 12 U.S.C. 1433, but only as impliedly recognizing the power of the states to tax the associations in the absence of express exemptions—*i.e.*, as a waiver of any constitutional immunity the associations might have as federal instrumentalities. So also we do not understand respondents to rely on § 1464(h) for any purpose other than to establish that the notes are subject to nondiscriminatory state taxes if they are not within the statutory exemption granted by § 1433. Petitioner, on the other hand, relies exclusively on § 1433, and does not argue that it is a "federal instrumentality" constitutionally immune from state taxation even apart from § 1433 (see Pet. 11, n. 9). Hence the controlling question is the interpretation of § 1433, and on that question the *Pittman* case is, we believe, dispositive.

Since the question whether petitioner is a constitutionally-immune federal instrumentality (and the subordinate question whether, if so, § 1464(h) is a waiver of that immunity) is not argued by petitioner, we do not discuss it.

below may prompt other states to adopt like legislation. Such taxes impose a substantial burden on the operations of the Federal Home Loan Banks and the Federal Savings and Loan Associations and to that extent tend to undermine the Congressional purpose to promote financially-sound, low-cost home financing institutions.

For the foregoing reasons and those stated in the petition, it is respectfully submitted that the petition for certiorari should be granted.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion and judgment of the Court of Common Pleas of Laurens County (R. 8–11) is unreported. The opinion of the Supreme Court of South Carolina (R. 15–23) is reported at 112 S.E. 2d 716.

JURISDICTION

The judgment of the Supreme Court of South Carolina was entered on February 5, 1960, and a timely petition for rehearing was denied on February 26, 1960 (R. 13–15). By order of the Chief Justice dated May 2, 1960, the time for filing a petition for writ of certiorari was extended to June 4, 1960 (R. 23–24).

A petition was timely filed on June 3, 1960, and was granted on October 10, 1960 (R. 24). Jurisdiction is conferred on this Court by 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether the imposition of a state stamp tax on promissory notes made by a Federal Savings and Loan Association to evidence loans from a Federal Home Loan Bank is barred by a federal statute exempting from state taxation advances by federal home loan banks.

STATUTES INVOLVED

The relevant portions of Sections 9, 10, and 13 of the Federal Home Loan Bank Act, c. 522, 47 Stat. 725, 12 U.S.C. Chap. 11; Sections 2 and 5 of the Home Owners' Loan Act of 1933, c. 64, 48 Stat. 128, 12 U.S.C. Chap. 12, and Sections 65–681 and 65–688, 6 Code of Laws of South Carolina (1952), are set forth in the Appendix, *infra*, pp. 13–16.

STATEMENT

The Federal Home Loan Bank Act, c. 522, 47 Stat. 725, established a system of federally chartered home loan banks to advance funds to eligible local organizations upon security of mortgages on homes. The Home Owners' Loan Act of 1933, c. 64, 48 Stat. 725, further implemented the congressional purpose of encouraging home ownership by providing for the establishment of Federal Savings and Loan Associations as "local mutual thrift institutions in which people may invest their funds" and thus facilitate "the financing of homes". Section 5(a), Home Owners' Loan Act of 1933 (12 U.S.C. 1464(a)). By law, such associations become "members" of the Federal Home Loan Bank

in the district in which they are located (Section 5(f), Home Owners' Loan Act of 1933 (12 U.S.C. 1464(f)) and the statute provides that advances by a federal home loan bank to its members "shall be made upon the note or obligation of the * * * borrower" (Section 10(c), Federal Home Loan Bank Act (12 U.S.C. 1430(c), Appendix, *infra*, p. 13). The entire system is supervised and administered by the Federal Home Loan Bank Board, which is appointed by the President. Section 17, Federal Home Loan Bank Act (12 U.S.C. 1437).

With respect to state taxation, Section 13 of the Federal Home Loan Bank Act (12 U.S.C. 1433, Appendix, *infra*, pp. 13–14) exempts the home loan bank and "its advances" from "all taxation" by "any State." Section 5(h) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(h), Appendix, *infra*, pp. 14–15) prohibits any state taxation of federal savings and loan associations which is greater than that levied on local mutual thrift institutions.

There is no dispute concerning the operative facts. The petitioner is a properly chartered Federal Savings and Loan Association in Laurens, South Carolina, and is a member of the Federal Home Loan Bank of Greensboro, North Carolina (R. 16). Between August 12, 1953, and January 3, 1958, the petitioner obtained ten advances from the Home Loan Bank of Greensboro in the aggregate amount of $5,675,000 and executed a promissory note for each of the ten advances (R. 7, 15–16).

The respondent assessed a documentary stamp tax of $2,270 against the petitioner under a state statute

imposing a stamp tax on promissory notes of 4 cents on each $100 or fractional part thereof. 6 Code of Laws of South Carolina, Section 65–688 (1952), Appendix, *infra*, pp. 15–16. The petitioner paid this tax under protest (R. 6) and brought a timely suit to recover the amount so paid. The Court of Common Pleas of Laurens County and the Supreme Court of South Carolina upheld the assessment.

INTEREST OF THE UNITED STATES

The Federal Home Loan Bank System and the Federal Savings and Loan Associations, which are members thereof, are under the supervision and control of the Federal Home Loan Bank Board, and are the instrumentalities chosen by Congress to execute a program of promoting public thrift and widespread home ownership. State taxation of the promissory notes given for advances to Federal Savings and Loan Associations by the Federal Home Loan Bank System is in violation of the express exemption provided by Congress and impairs the national policy. The Federal Government has an interest both as the administrator of, and an investor in, the System.

SUMMARY OF ARGUMENT

At issue here is the breadth of the exemption from state taxation of "advances" made by Federal Home Loan Banks to Federal Savings and Loan Associations. Under the statutory scheme it is the function of Federal Home Loan Banks to make advances to its members, such advances to be secured by home mortgages and the borrower's promissory note. According to the statute, such "advances" are to be free

from state taxation. 12 U.S.C. 1433, Appendix, *infra*, pp. 13–14.

Here the State of South Carolina is attempting to levy a documentary stamp tax on the promissory notes made by the petitioner, a Federal Savings and Loan Association, in favor of the Federal Home Loan Bank of Greensboro, North Carolina, of which it was a member.

Contrary to the approach of the courts below, this Court has previously indicated that such statutory exemptions are to be construed to effectuate the congressional purpose. *Pittman* v. *Home Owners' Loan Corp.*, 308 U.S. 21, held that the exemption of "loans", in an analogous provision, prevented a state from imposing a tax on mortgages offered for record by the Federal Home Owners' Loan Corporation. That case held that it did not matter whether the tax on the transaction was collectible from the borrower or the lender for it still constituted a prohibited tax on the loan.

So here, the fact that South Carolina is attempting to collect the tax from the petitioner, rather than the Home Loan Bank of Greensboro, has no substantive bearing on the issue, for the tax is still one on the advance exempted by Congress from state taxation.

The reliance of the South Carolina Supreme Court on Section 5(h) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(h), Appendix, *infra*, pp. 14–15), providing that the states shall not tax Federal Savings and Loan Associations more than similar local organizations, is misplaced. That provision simply pro-

hibits discriminatory taxation of federal associations. While this implies congressional recognition that non-discriminatory state taxation of such associations is possible, it cannot be read as modifying the exemption from taxation of the "advances" of a Federal Home Loan Bank. It simply means that, to the extent state taxation is permitted by law, it must be uniform.

The South Carolina documentary stamp tax is clearly within the statutory exemption and the courts below erred in permitting its collection.

ARGUMENT

THE IMPOSITION BY SOUTH CAROLINA OF A DOCUMENTARY STAMP TAX UPON PROMISSORY NOTES ISSUED BY A BORROWING FEDERAL SAVINGS AND LOAN ASSOCIATION IN RETURN FOR A LOAN MADE BY A FEDERAL HOME LOAN BANK INFRINGES THE EXPRESS EXEMPTION FROM STATE TAXATION GRANTED BY CONGRESS TO ADVANCES MADE BY FEDERAL HOME LOAN BANKS

Under the statutory plan the primary function of a Federal Home Loan Bank is to advance funds to eligible organizations and to require the borrowers to execute promissory notes for such advances.[1] Here it is undisputed that the Federal Home Loan Bank of Greensboro, North Carolina, made ten advances to the petitioner, which, as a federal savings and loan association, was a member of the Bank, and that the petitioner made and delivered ten promissory notes to the Bank covering such advances. (R. 15-16.)

---

[1] Section 10, Federal Home Loan Bank Act (12 U.S.C. 1430), Appendix, *infra*, p. 13.

Congress has exempted such transactions from both state and federal taxation by providing in Section 13 of the Federal Home Loan Bank Act (12 U.S.C. 1433), Appendix, *infra*, pp. 13–14):

> The bank, including its franchise, its capital, reserves, and surplus, *its advances*, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or *by any State*, county, municipality or local taxing authority * * *.[2] [Emphasis added.]

The application of this statutory exemption may not be avoided, as the court below considered (R. 18), by construing this exemption as prohibiting only those state taxes assessed against Federal Home Loan Banks. This Court has consistently construed similar exemption statutes as precluding state taxation of all facets of the exempt activity even though the initial impact of a particular tax may be shifted from the federal instrumentality. See, e.g., *Federal Land Bank* v. *Crosland*, 261 U.S. 374; *Federal Land Bank* v. *Bismarck Co.*, 314 U.S. 95; *Carson* v. *Roane-Anderson Co.*, 342 U.S. 232. Cf. *United States* v. *Allegheny County*, 322 U.S. 174, 186.

Closely in point is *Pittman* v. *Home Owners' Corp.*, 308 U.S. 21, where a virtually identical statutory exemption was considered. There, Maryland attempted to levy a documentary tax on a mortgage required by the federal statute as security for a loan made by the Home Owners Loan Corporation.[3] The Maryland

[2] The provision goes on to except state and local real estate taxes from this exemption.

[3] A now abolished subsidiary of the Home Loan Bank Board.

statute levied a tax on every mortgage at the rate of ten cents for each $100 of the principal amount of the debt to be collected when the mortgage was recorded or offered for record. The applicable federal statute (Sec. 4(c), Home Owners' Loan Act of 1933) prohibited state taxation of Home Owners Loan Corporation "loans", and this Court held (p. 31) that the "manifest purpose" of this "broad exemption" covered "the entire process of lending, the debts which result therefrom and the mortgages given to the Corporation as security."

We submit that under the same reasoning the petitioner is exempt from the South Carolina tax. The statute here specifically exempts the "advances"—a term contextually synonymous with the "loans" considered in *Pittman*. The execution of a note by a member of a Federal Home Loan Bank in return for an advance is just as much a part of the Bank's "lending function" as was the recordation of a mortgage by the Home Owners Loan Corporation. As an integral and required part of the process of obtaining an advance, the note is as exempt as any other phase of this procedure.

The court below thought that *Pittman* was distinguishable because the State was not seeking to collect the tax from the Bank (as it was from the Home Owners Loan Corporation in *Pittman*), but from the petitioner association.[4] This implies, erroneously we

[4] It is not clear from the South Carolina statute whether the tax on promissory notes must be paid by the payor or the payee. The tax is levied on the maker of a note or one for whose use or benefit the instrument is made. 6 Code of Laws of South Carolina, Sec. 65-681 (1952), Appendix, *infra*, p. 15.

believe, that the mode of collection adopted by a state determines whether a particular tax is within or without the congressional ban. As this Court has twice said, however, "whoever pays it it is a tax upon the mortgage [here the advance] and that is what is forbidden by the law of the United States." *Federal Land Bank* v. *Crosland, supra*, pp. 378, 379; *Pittman* v. *Home Owners' Corp., supra,* p. 31.

In matters of substance the South Carolina taxing act is much like the one involved in *Pittman*. It imposes a general tax on the advancing or lending of money through the convenient means of requiring purchase of revenue stamps to be affixed upon the documents evidencing the indebtedness.[*] Moreover, the amount of the tax is measured by the amount of the advance, viz., four cents for each one hundred dollars or fractional part thereof. Paraphrasing the descriptive language of the opinion in *Pittman* (p. 31), the tax is imposed on the advance and is graded according to the amount of the loan and the condition of affixing revenue stamps to the note securing the advance is a practical method of collection.

The court below also felt that a result contrary to *Pittman* was justified here because of the language of Section 5(h) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(h), Appendix, *infra,* pp. 14–15) which prohibits states from taxing Federal Savings

[*] Thus, the stamps are required for all promissory notes, written obligations to pay money, assignments of salaries, mortgages which incorporate a certificate of indebtedness, etc., and on each renewal of such documents. 6 Code of Laws of South Carolina (1952), Sec. 65-688 (Appendix, *infra*, pp. 15–16).

and Loan Associations to a greater extent than similar locally chartered organizations. The court read this as an affirmative sanction of non-discriminary state taxation under which the South Carolina stamp tax could be justified. While it is true that by prohibiting discriminatory taxation of Federal Savings and Loan Associations the statute impliedly allows non-discriminatory levies upon them, it does not follow that Congress took this circuitous way of permitting taxation of the very "advances" by Home Loan Banks which it had specifically exempted. Indeed, the scheme of the statute and the reading together of the two Acts require a contrary conclusion. The petitioner is not attempting in this action to assert any general federally-created immunity from state taxes, but is merely claiming that the State cannot collect a tax which in substance is imposed on advances from the Home Loan Bank. Thus, the question here is not whether Federal Savings and Loan Associations are exempt from all state taxes, but whether advances made to such associations by Federal Home Loan Banks may be exempted from state taxation, as Congress has commanded.

The implication in Section 5(h) of the Home Owners Loan Act of 1933 (12 U.S.C. 1464(h)) that the states have the power to levy non-discriminatory taxes on Federal Savings and Loan Associations must be qualified by the express limitation of the power of the states to tax the advances of Federal Home Loan Banks.

In its brief in opposition to certiorari (pp. 4–5), the respondent contended that exemption of Federal

Savings and Loan Associations from the tax on notes would discriminate against state-chartered associations. It is not at all clear that, insofar as they borrow from Federal Land Banks, as many of them may, state institutions will not also be free of the tax on notes given for such advances. If under some circumstances the state tax does create an undesirable competitive situation, the ready remedy lies with the legislature which imposed it rather than in an attack on the exemption granted by federal law.

This Court has repeatedly held that the congressional power to immunize legislative programs from state taxation extends beyond the intergovernmental immunity implied from the Supremacy Clause of the Constitution. Indeed, this power includes whatever is "necessary and proper" to the implementation of its constitutional functions. Constitution, Art. 1, Sec. 8, par. 18; *Pittman* v. *Home Owners' Corp., supra; Federal Lank Bank* v. *Crosland, supra; Stewart & Co.* v. *Sadrakula,* 309 U.S. 94, 103; *Ex parte Bransford,* 310 U.S. 354; *Federal Land Grant* v. *Bismarck Co.,* 314 U.S. 95, 102; *Dameron* v. *Brodhead,* 345 U.S. 322, 325–327; *Carson* v. *Roane-Anderson Co.,* 342 U.S. 232. Unquestionably, creating the Federal Home Loan Bank system was a proper exercise of congressional power and "the power to create implies a power to preserve." *McCulloch* v. *Maryland,* 4 Wheat. 316, 426. The exemption of the process of advancing money between two federally-endowed organizations is a "necessary and proper" exercise of that power.

CONCLUSION

For the reasons stated, the judgment of the Supreme Court of South Carolina should be reversed.

Respectfully submitted.

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JANUARY 1961.

APPENDIX

Federal Home Loan Bank Act, c. 522, 47 Stat. 725:

SEC. 9. Any member or nonmember borrower of a Federal Home Loan Bank shall be entitled to apply in writing for advances. Such application shall be in such form as shall be required by the Federal Home Loan Bank with the approval of the board. Such Federal Home Loan Bank may at its discretion deny any such application, or, subject to the approval of the board, may grant it on such conditions as the Federal Home Loan Bank may prescribe. (12 U.S.C. 1429.)

SEC. 10. * * *

* * * * * *

(c) Such advances shall be made upon the note or obligation of the member or nonmember borrower secured as provided in this section, bearing such rate of interest as the board may approve or determine, and the Federal Home Loan Bank shall have a lien upon and shall hold the stock of such member as further collateral security for all indebtedness of the member to the Federal Home Loan Bank. * * *
(12 U.S.C. 1430.)

SEC. 13. Any and all notes, debentures, bonds, and other such obligations issued by any bank, and consolidated Federal Home Loan Bank bonds and debentures, shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The

bank, including its franchise, its capital, reserves, and surplus, its advances, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that in any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The notes, debentures, and bonds issued by any bank, with unearned coupons attached, shall be accepted at par by such bank in payment of or as a credit against the obligation of any home-owner debtor of such bank.

(12 U.S.C. 1433.)

Home Owner's Loan Act of 1933, c. 64, 48 Stat. 128:

SEC. 2. As used in this Act—

* * * * *

(d) The term "association" means a Federal Savings and Loan Association chartered by the Board as provided in section 5 of this Act.

(12 U.S.C. 1462.)

* * * * *

SEC. 5(h) [as amended by Sec. 909, Social Security Act Amendments of 1939, c. 666, 53 Stat. 1360, and Sec. 313(d) of the Revenue Act of 1951, c. 521, 65 Stat. 452] Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of the Internal Revenue Code with respect to wages paid after December 31, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes) and all shares of such associa-

tions shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.

(12 U.S.C. 1464.)

6 Code of Laws of South Carolina (1952):

ARTICLE 2.

Documentary Stamp Tax.

§ 65–681. *Imposition.*

There shall be levied, collected and paid for and in respect of the several bonds, debentures or certificates of stock and indebtedness and other documents, instruments, matters and things mentioned and described in §§ 65–682 to 65–684 and §§ 65–688 to 65–690 or for or in respect of the vellum, parchment or paper upon which such instrument, matter or thing, or any of them, are written or printed by any person who makes, signs, issues, sells, removes, consigns or ships them or for whose benefit or use they are made, signed, issued, sold, removed, consigned or shipped the several taxes specified in said sections.

1942 Code § 2521; 1932 Code § 2521; 1928 (35) 1089.

* * * * * *

§ 65–688. *Notes, mortgages; assignments of wages, etc.*

The tax on promissory notes, except bank notes issued for circulation and executory contracts for the payment of money which are

executed or carried out in an instrument of writing to which documentary stamps are affixed, non-negotiable notes, written obligations to pay money, except as may otherwise be provided for in this chapter, assignments of salaries, wages or other compensation and mortgages which incorporate the certificate of indebtedness not otherwise shown in a separate instrument, and each renewal of any thereof, shall be for a sum not exceeding one hundred dollars, four cents and for each additional one hundred dollars, or fractional part thereof, four cents.

1942 Code § 2525; 1932 Code § 2525; 1928 (35) 1089; 1932 (37) 1378.

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No. 126

Supreme Court of the United States

OCTOBER TERM, 1960

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, PETITIONER,

versus

SOUTH CAROLINA TAX COMMISSION, AND OTIS W. LIVINGSTON, CHAIRMAN, ET AL., RESPONDENTS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the Supreme Court of South Carolina (R. 15-23) is reported at 236 S. C. 2 and at 122 S. E. (2d) 716.

JURISDICTION

The judgment of the Supreme Court of South Carolina, contained in the opinion (R. 15-23), was entered on February 5, 1960. A timely petition for rehearing was denied on February 26, 1960 (see R. 13-15). The time for filing a petition for writ of certiorari was extended by Mr. Chief

Justice Warren on May 2, 1960, to June 4, 1960 (R. 23-24). The petition was filed on June 3, 1960, and was granted on October 10, 1960 (R. 24; 81 S. Ct. 47). The jurisdiction of this Court rests on 28 U.S.C. 1257 (3) and 2101 (e).

QUESTION PRESENTED

Whether South Carolina may tax the "note or obligation" required by Federal law (12 U.S.C. 1430 (c)) to secure Federal Home Loan Bank "advances" which are specifically exempted from State taxation by 12 U.S.C. 1433.

STATUTES INVOLVED

Section 10 of the Federal Home Loan Bank Act of 1932, 47 Stat. 731, 12 U.S.C. 1430, as amended, provides in pertinent part as follows:

> (a) Each Federal Home Loan Bank is authorized to make advances to its members upon the security of home mortgages, or obligations of the United States, or obligations fully guaranteed by the United States, subject to such regulations, restrictions, and limitations as the Board may prescribe. • • •
>
> (c) Such advances shall be made upon the note or obligation of the member or nonmember borrower secured as provided in this section, bearing such rate of interest as the board may approve or determine, and the Federal Home Loan Bank shall have a lien upon and shall hold the stock of such member as further collateral security for all indebtedness of the member to the Federal Home Loan Bank. • • •

Section 13 of the Federal Home Loan Bank Act of 1932, 47 Stat. 735, 12 U.S.C. 1433 (hereinafter cited as "Section 1433"), as amended, provides:

> Any and all notes, debentures, bonds, and other such obligations issued by any bank, and consolidated Federal Home Loan Bank bonds and debentures, shall be exempt both as to principal and interest from all

taxation (except surtaxes, estate, inheritance, and gift taxes) anw or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The bank, including its franchise, its capital, reserves, and surplus, its advanees, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that in (*sic*) any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The notes, debentures and bonds issued by any bank, with unearned coupons attached, shall be accepted at par by such bank in payment of or as a credit against the obligation of any homeowner debtor of such bank.

Section 5(h) of the Home Owners Loan Act of 1933, 48 Stat. 133, 12 U.S.C. 1464(h) as amended (hereinafter cited as "Section 1464(h)"), provides:

> (h) Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of Title 26 with respect to wages paid after December 28, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes), and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on

other similar local mutual or cooperative thrift and home financing institutions.

Section 65-688 of the Code of Laws of South Carolina of 1952 provides as follows:

> The tax on promissory notes, except bank notes issued for circulation and executory contracts for the payment of money which are executed or carried out in an instrument of writing to which documentary stamps are affixed, nonnegotiable notes, written obligations to pay money, except as may otherwise be provided for in this chapter, assignments of salaries, wages or other compensation and mortgages which incorporate the certificate of indebtedness not otherwise shown in a separate instrument, and each renewal of any thereof, shall be for a sum not exceeding one hundred dollars, four cents and for each additional one hundred dollars, or fractional part thereof, four cents.

STATEMENT

Petitioner, a Federal savings and loan association with its principal place of business at Laurens, South Carolina ("The Association") (R. 3), was chartered pursuant to 12 U.S.C. 1464(a), and is a member of the Federal Home Loan Bank of Greensboro, North Carolina ("The Bank") as required by 12 U.S.C. 1464(f). Under protest, the Association paid State documentary taxes on the notes which 12 U.S.C. 1430 (c) required it to issue in order to obtain Bank "advances". In this action petitioner sought, but was denied, recovery of the taxes paid.

In order to place in proper context the issue in the case, we summarize briefly the salient features of the Federal Home Loan Bank system and its relation to the Federal savings and loan associations.

The Federal Home Loan Bank System: [1] In 1932, Congress established [2] the Federal Home Loan Bank system, which consists of the Federal Home Loan Bank Board ("The Board") (constituted pursuant to 12 U.S.C. 1437), and a number of Federal Home Loan Banks located in as many districts (see 12 U.S.C. 1423), including the Federal Home Loan Bank of Greensboro, North Carolina. Upon its organization, each bank issued capital stock (12 U.S.C. 1426) to which eligible savings and loan institutions (see 12 U.S.C. 1424) could subscribe and thus become "members" of the Bank (see 12 U.S.C. 1426(c)). Upon incorporation, a Federal savings and loan association, such as petitioner "shall become automatically a member" of the Bank of the district in which it is located (12 U.S.C. 1464(f); see 12 U.S.C. 1424) [3] by subscribing to a determinate number of shares in the Bank (12 U.S.C. 1426(c) and paying for these shares (12 U.S.C. 1426(d)). Petitioner is a member of the Greensboro Bank (R. 2, 3).[4]

In 1933, Congress authorized [5] the establishment of "associations to be known as 'Federal Savings and Loan Associations'." They are intended to function as "local mutual thrift institutions in which people may invest their funds" and to facilitate "the financing of homes" (12 U.S.C. 1464 (a); see also 12 U.S.C. 1465). "The entire capital of [these]

---

[1] For a comprehensive account of the organization and activities of the Federal Home Loan Bank system, see 1959 ANN. REP. FEDERAL HOME LOAN BANK BOARD, esp. at 15-16, 49-51, 55-56.

[2] This statute is the Federal Home Loan Bank Act of 1932, 47 Stat. 725 *et seq.*, now codified, with amendments, as 12 U.S.C. 1421-1449.

[3] A State-chartered institution may "become a member of or a non-member borrower of," the appropriate Bank if it meets the requirements specified in 12 U.S.C. 142 (a)

[4] A Federal savings and loan association may not unilaterally withdraw from its Bank membership, unlike other Bank members who may sever relationship on six months notice. 12 U.S.C. 1426 (c)

[5] This statute was the comprehensive emergency legislation known as the Home Owners Loan Act of 1933, 48 Stat. 128. A number of its provisions, including the establishment of the Home Owners Loan Corporation, have since been superseded or repealed (see note 18, *infra*) but those sections relating to Federal savings and loan associations have been codified, with amendments, as 12 U.S.C. 1461-1468.

associations, all of which are mutual institutions, is owned by their members in the form of savings accounts. These accounts are nonassessable and participate equally in the earnings of the association. Dividends are distributed semiannually at a rate determined by the directors on the basis of net earnings. • • • Withdrawal of accounts, in full or in part, may be made by the owner, in accordance with charter and regulatory provisions." 1959 ANN. REP. FED. HOME LOAN BANK BD. 49-50. Additional funds are furnished to Federal associations by United States government purchases of "preferred shares" (12 U.S.C. 1464(g)) and "full paid income shares" (12 U.S.C. 1464(j)).

The Federal associations' ordinary functions are to lend funds secured by their shares or by first mortgages upon homes (12 U.S.C. 1464(c)), although an association may also be required to serve as a "fiscal agent of the Government" or as "agent for any other instrumentality of the United States" (12 U.S.C. 1464(k)). The Federal Home Loan Bank Board supervises association activities. Association charters are granted only to "persons of good character and responsibility", and only if "in the judgment of the Board" an association is needed and will likely prove useful and successful in its operations. 12 U.S.C. 1464(e). The Board is specifically authorized to prescribe "rules and regulations" governing the "organization, incorporation, examination, operation, and regulation" of Federal associations, 12 U.S.C. 1464(a). Finally, the Board may appoint a "conservator or receiver" of an association for various reasons (12 U.S.C. 1464(d) (2), including "unsafe or unsound operation" (12 U.S.C. 1464(d)(2)(iv)).

Member and nonmember Bank borrowers, including Federal associations, are "entitled to apply in writing for advances" from the Bank. (12 U.S.C. 1429.) Such "advances" "shall be made upon the note or obligation" of the

borrower (12 U.S.C. 1430 (e)), and are ordinarily secured by home mortgages or by Government issued or guaranteed obligations (12 U.S.C. 1430(e) ; see also 1430(b)). A member securing such an "advance" shall enter into "a primary and unconditional obligation" to repay it with interest and costs, etc. (12 U.S.C. 1430(d)).

"Advances" [6] by the Bank are "exempt from all taxation, now or hereafter imposed * * * by any State, county, municipality, or local taxing authority," as well as from Federal taxation. 12 U.S.C. 1433. As for Federal associations, 12 U.S.C. 1464(h) forbids any "State, Territorial, county, municipal, or local taxing authority" to impose a discriminatory tax upon "such associations or their franchise, capital, reserves, surplus, loans or income * * *." Associations are (with minor exceptions) relieved of all Federal taxation (12 U.S.C. 1464(h)).

Savings and Loan Associations in South Carolina: As of December 31, 1959, there were in South Carolina 43 Federal, and 27 State chartered associations,[7] all of which are either members of, or borrowers from, the Greensboro Bank. As of the same date, total outstanding Bank advances to these associations were $21,076,000,[8] for which "notes or obligations" in the same dollar amount were required by 12 U.S.C. 1430(e). South Carolina, as do at least two other States,[9] imposes a documentary stamp tax upon promissory

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[6] Besides "advances," 12 U.S.C. 1433 also forbids local taxation on "[t]he Bank, including its franchise, its capital, reserves, and surplus * * * and its income * * *." However, 1433 provides one exception to the general interdiction on local taxation, by specifically permitting local taxes on the Bank's real property.

[7] See 1959 ANN. REP. FEDERAL HOME LOAN BANK OF GREENSBORO, N. C. (hereinafter cited as ANN. REP. (GREENSBORO) at 6. The number has steadily grown. For 1958, there were 42 Federal and 25 State association members (1958 ANN. REP. (GREENSBORO) at 6), and for 1957, the corresponding figures were 41 and 22 respectively (1957 ANN. REP. (GREENSBORO) at 10).

[8] This figure appears in 1959 ANN. REP. (GREENSBORO) at 14-15.

[9] See PURDON'S PENNA. STATS. ANN. § 72-203(p) (1949); FLA. STATS. § 201.08(1) (1955).

notes given by borrowers (S. C. CODE § 65-688 (1952), including "notes or obligations" given by associations securing "advances" from the Greensboro Bank. On the "advances" outstanding on December 31, 1959, the total South Carolina Tax was $8,430.40. This figure is understated, since the dollar volume of Bank advances throughout a calendar year—including new advances and renewals—is appreciably greater than the volume of advances outstanding on a given date.[10]

Laurens Federal Savings and Loan Association: Petitioner is a duly organized Federal association, and a member of the Greensboro Bank. Between August 12, 1953 and October 7, 1957, it obtained ten advances aggregating $5,675,000 from the Greensboro Bank (R. 7), each time executing for the advance the required "note or obligation" properly secured. Respondent South Carolina Tax Commission assessed taxes of $2,270.00 upon the "notes" given by petitioner to the regional bank at Greensboro (R. 5). Petitioner paid the tax under protest (R. 6) and timely filed suit in the Court of Common Pleas of Laurens County to recover the amount of the tax, claiming in its complaint (R. 3-7), that the South Carolina documentary stamp tax is "in direct violation of the tax exemption granted this plaintiff and the Federal Home Loan Bank of Greensboro by the Federal Home Loan Bank Act, 12 U.S.C.A. 1421

[10] The aggregate dollar volume of advances to South Carolina associations is not available. The relatively larger figure appears from available statistics respecting the total volume of advances from the Greensboro Bank to all associations in its district (roughly the Southeastern part of the country). Thus, as of December 31, 1959, outstanding advances were $234,430,250. 1959 ANN. REP. (GREENSBORO) at 12; see also 1959 ANN. REP. FHLB BD. at 57. But the District's aggregate volume of advances for 1959 was $217,300,000 in "new advances", and $115,500,000 in "renewals", for a total of $332,800,000. 1959 ANN. REP. (GREENSBORO) at 5. The aggregate volume of "new advances" and "renewals" is not furnished on a state-to-state basis, as are the figures for advances outstanding on the last day of the calendar year. Nor is there a state-to-state breakdown of the volume of advances to Federal and State chartered associations, although for the nation as a whole the federal-state ratio is roughly 3 to 2. 1959 ANN. REP. FHLB BD. at 18.

et seq. • • • (R. 6). Respondent's Answer (R. 7-8) asserted the state tax to be "just, legal and proper and specifically authorized by the • • • Home Owners Loan Act of 1933, more specifically, 12 U.S.C.A. 1464 (h)" (R. 8). The trial court held (R. 8-11) and the Supreme Court of South Carolina in its opinion agreed (R. 15-23), that the State tax was authorized by Federal law.

The State Court Opinion: The court concluded that the language of 12 U.S.C. 1433 granting "immunity • • • from taxation applies only to the Federal Home Loan Bank" (R. 18), and that South Carolina had "not sought to place any documentary tax" upon the Bank but had assessed it only against petitioner (*ibid.*). The opinion distinguished this Court's decision in *Pittman v. Home Owners Loan Corp.*, 308 U. S. 21 (1939)—which invalidated a Maryland documentary tax on a mortgage securing a HOLC loan and offered for recordation by HOLC—as "not applicable under the factual situation here," on the theory that the *Pittman* mortgage "was offered for record by the Home Owners' Loan Corporation and not by the borrower association" (R. 19).

ARGUMENT

12 U.S.C. 1433 (Section 13 of the Federal Home Loan Bank Act of 1932, 47 Stat. 725 at 735), provides that "advances" by the Federal Home Loan Bank "shall be exempt from all taxation now or hereafter imposed • • • by a State, county, municipality, or local taxing authority." 12 U.S.C. 1430 (Section 10 of the same Act) authorizes the Bank "to make advances to its members," including Federal associations such as petitioner, only "upon the note or obligation of the member • • • borrower" properly secured (see 12 U.S.C. 1430(a)). South Carolina has imposed its documentary stamp tax upon the "notes or obligations" without which an association cannot obtain the needed "ad-

yances" which Congress intended to be available to it through the Federal Home Loan Bank system.

This tax, we submit, is an indirect although nonetheless forbidden tax upon the "advance" itself, since the "note or obligation" is essential to obtaining the "advance", and since in any event the taxed "note or obligation" is an integral part of the entire loan transaction which Congress intended to remain tax exempt. Indeed, the tax is precisely determined by the amount of the "advance", since the association's "note or obligation" is necessarily given for the exact amount of the "advance" made by the Bank. The invalidity of such a tax is amply demonstrated by the statutory language, by applicable decisions of this Court, and by the legislative history and policy of the statute.

I.

The decision of the court below is squarely contrary to the unanimous[11] ruling of this Court in *Pittman v. Home Owners Loan Corp.*, 308 U. S. 21 (1939). That case involved a Maryland statute which imposed a State recording tax, evidenced by stamps, upon mortgages offered for recordation within the State. The Home Owners Loan Corporation, a now abolished subsidiary of the Federal Home Loan Bank Board,[12] sought to record, without payment of the State tax, a mortgage issued to it as security for loans which the Corporation had made under the Home Owners Loan Act of 1933. Section 4(c) of that Act provided in pertinent

[11] Except for Mr. Justice Butler who did not participate in the case, 308 U. S. at 33.

[12] Congress, as an emergency measure, in 1933 authorized the Federal Home Loan Bank Board to organize the Home Owners Loan Corporation. (See the Act's preamble, 48 Stat. 128, and Section 4(a), 48 Stat. 129.) The Corporation stood in substantially the same relation to the Board as the Federal Home Loan Banks except that eligible "Member" savings and loan associations subscribed to Bank stock, while the Secretary of the Treasury underwrote the Corporation. Section 4(b), Stat. 129. The Corporation was eventually abolished as a separate entity in the reorganization of the Executive Department of the Government. See the statutory references collected in the note to 12 U.S.C. 1463.

part[13] that "[t]he Corporation, including * * * its loans * * * shall likewise be exempt from such taxation," *i.e.*, "from all taxation * * * now or hereafter imposed * * * by any State, county, municipality, or local taxing authority." The Maryland court held the State recording tax inapplicable to HOLC mortgages, and this Court affirmed.

In striking down the State tax, this Court held that it was immaterial who was actually required to pay the recording tax, since "whoever pays it it is a tax upon the mortgage, and that is what is forbidden by the law of the United States" (308 U. S. at 31, quoting *Federal Land Bank v. Crosland*, 261 U. S. 374 at 378-379 (1923). In construing Section 4(c)'s exemption, the Court regarded the word "loans" as the "critical term," and held that "in order to carry out the manifest purpose of the broad exemption" from State taxation, the term "should be construed as covering the entire process of lending, the debts which result therefrom, and the mortgages given to the Corporation as security" (*id.* at 31), since "[b]oth the mortgage and its recordation were indispensable elements in the lending operations authorized by Congress." (*id.* at 32).

Since, as a matter of statutory reading, "Congress ha[d] undertaken to safeguard the operations of the Home Owners' Loan Corporation by providing the described immunity" (*id.* at 33), this Court treated as beside the point

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[13] Section 4(c), 48 Stat. 128 at 130 (see also 48 Stat. 643 at 644), 12 U.S.C. 1463(c) (1946 ed.), provided as follows:

The bonds issued by the Corporation under this subsection shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any District, Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The Corporation, including its franchise, its capital, reserves and surplus, and its loans and income, shall likewise be exempt from such taxation; except that any real property of the Corporation shall be subject to taxation to the same extent, according to its value, as other real property is taxed. (This section is quoted in the *Pittman* decision, 308 U. S. 21 at 31, n. 3.)

contentions that the "tax is not discriminatory" and "does not impose a burden upon" the HOLC (*id.* at 32).[14]

A. The decision of the Supreme Court of South Carolina is in direct conflict with the holding and principles enunciated in *Pittman*. The two Federal statutes involved in this case and in *Pittman* were enacted within a year of each other. They are identical except that the term "advances" appears in 12 U.S.C. 1433 (from the 1932 Act) in the same position that "loans" occupied in Section 4(c) of the Home Owners Loan Act of 1933. This substitution of terms, however, does not affect the identity of meaning of the two provisions, since "loans" and "advances" have the same meaning. "To 'advance' is to 'supply beforehand,' 'to loan before the work is done or the goods made.' This is the popular understanding of the language, as well as the accurate definition." *Laflin & Rand Powder Co. v. Burckhardt*, 97 U. S. 110, 117 (1878).[15] The identity of "loans" and "advances" was likewise the Congressional understanding during the consideration of the Federal Home Loan Bank Act of 1932. Thus, Senator Reed, in offering the amendment to present 12 U.S.C. 1433 so as specifically to exempt from taxation Bank "advances to its members,"[16] pointed out that "[w]e should not, of course, put the **loans** of this new bank in the position of being taxable in several States." 75 Cong. Rec. 14, 659 (72d Cong., 1st Sess.) (emphasis supplied). See also the statement by

[14] This Court also sustained Congressional power to grant the mortgages the immunity from State tax to which Section 4(c) gave expression (308 U. S. at 32-33).

[15] "The term 'advance' is generally used to refer to a payment of money before it is due * * *" (*Commissioner v. Dravo*, 119 F. (2d) 97, 100 (3rd Cir. 1940)), and "unquestionably, it may have the meaning of a loan if * * * used in connection with a promise, express or implied to repay that money" (*Socony Vacuum Oil Co. v. C. M. Johnston & Sons*, 103 F. (2d) 275, 278 (5th Cir. 1939)). See generally 2A Words and Phrases 117-119 (Perm. Ed. 1955), and 1 Oxford English Dictionary 113 (1933) under "Advance" (vb. and n. [8]).

[16] See Part II, *infra* at 15.

Congressman Williams in debate on the 1932 Act, 75 Cong. Rec. 12, 591 (72d Cong., 1st Sess.).[17]

Both provisions—Section 1433 in the present case, and Section 4(c) considered in *Pittman*—grant an equally "broad exemption" (308 U. S. at 31) from State taxation. Like the "loans" in *Pittman*, the term "advances" in Section 1433 should be "construed as covering the entire process of lending," including "the debts which result therefrom and the mortgages" given as necessary security (308 U. S. at 31). *Pittman* sustained the tax immunity of the mortgage phase of the "entire process of lending" contemplated by Congress; the present case involves the equally necessary tax immunity of the "debts which result" from this "process of lending." Furthermore, both the borrower's "note or obligation" and the mortgage or other security are equally "indispensable elements in the lending operations authorized by Congress" (308 U. S. at 32). Both are specifically required by statute as a pre-condition to obtaining an "advance" from the Bank. The "note or obligation" required by Section 1430(c) represents the legally enforceable commitment of the borrower to repay the principal of the "advance" plus interest; the mortgage required by present Section 1430(a) and by old Section 4(c) of the HOLC Act (involved in *Pittman*) gives added assurance that the lending Bank will recover the amount of its "advance" to the borrower.

In debate, it was noted that "[t]hese provisions" (now Sections 1430(a) and (c)) requiring mortgage security and the borrower's note or obligation, were "inserted to provide

[17] "Each member institution [of the Federal Home Loan Bank], within the limitations prescribed, may secure *advances or loans* from the bank upon the note or obligation of the member secured by home mortgages and the stock of the member in the bank," (emphasis supplied). The immediate reference is, of course, to Section 1430(a) ("such advances shall be made upon the note or obligation of the" borrower) and Section 1430(a) ("upon the security of home mortgages, or obligation" of or guaranteed by the United States).

unquestioned safety for the home-loan banks and for the bonds which are to be issued against the home mortgages." 75 Cong. Rec. 12,610 (72d Cong., 1st Sess.) (remarks of Representative Hancock). Both provisions are integral to the "entire process of lending" (308 U. S. at 31) which Congress intended to be unfettered by the taxes of "any State, county, municipality, or local taxing authority" (Section 1433).[18]

The South Carolina tax is thus clearly an indirect impost upon the Bank "advances" which Congress intended to remain immune from State taxes. In *Pittman*, the forbidden recording tax "is imposed upon the mortgage and is graded according to the amount of the loan * * *" (308 U. S. at 31). Likewise, South Carolina's documentary stamp tax "is imposed upon" the association's "note or obligation," and the amount of the tax similarly "is graded according to the amount of" the "advance" for which the required "note or obligation" is given.

B. The South Carolina court sought to avoid *Pittman*'s impact on two grounds. First, it stated that since the mortgage in *Pittman* was "offered for record" by the HOLC itself, "[i]t is readily apparent that the rule there announced is not applicable under the factual situation here" (R. 19). But the short answer to this contention is that "whoever pays" the tax—whether the Bank which makes the "advances", or petitioner who can secure such "advances" only upon its "note or obligation" (Section 1430(*c*)—"it is a tax upon" the Bank's tax-free "advances," and "that is what is forbidden by the law of the United States." *Pittman* case, *supra* at 31; *Federal Land Bank v. Crosland*, 261 U. S. 374 at 373-379 (1923). Indeed,

[18] Section 1433 also confers a like exemption from "all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof."

Pittman itself specifically rejected an attempt to distinguish the *Crosland* case in terms of the party to the loan transaction actually paying the tax. See 308 U. S. at 30-31.

Secondly, *Pittman's* principles are no less applicable because the Home Owners Loan Corporation may well have been, by its very nature, a tax-immune Federal "instrumentality or agency"—a factor apparently considered by the South Carolina court as distinguishing *Pittman* from the present case (see R. 18-19). But as we have shown, the tax exemption recognized by *Pittman* rests, not upon a constitutional immunity for a "Federal instrumentality," but solely upon a statute which is identical in every relevant respect to Section 1433.[19] Because of respondent's efforts to inject the "federal instrumentality" concept into the present case (see Br. in Opp. at pp. 2-4) we stress here, as in the Petition for Certiorari (Pet. at p. 11, note 9),[20] that the issue here is exclusively one of the proper construction of the Federal statutes which embody the tax immunity Congress has chosen to confer upon Bank-association loan transactions. On this issue of statutory interpretation, the *Pittman* decision is controlling.

II.

The legislative history of the Federal Home Loan Bank Act of 1932 also reflects the importance which Congress came to attach to the specific tax immunity of Bank "ad-

[19] The only constitutional issue *Pittman* decided was that the statutory tax immunity of HOLC lending operations was within the "constitutional authority" of Congress to grant (308 U. S. at 33), *i. e.*, there is "a stated immunity created by Congress in the exercise of a constitutional power" (*Esso Standard Oil Co. v. Evans*, 345 U. S. 495, 500 (1953) (citing *Pittman* case). See also *Carson v. Roane-Anderson Co.*, 342 U. S. 232, 233-234 (1952), noting "[t]he constitutional power of Congress to protect any of its agencies from state taxation", and citing *Pittman*. Respondent does not question the constitutionality of the immunity granted by Section 1433, but only denies that the immunity covers the present tax.

[20] See also Memorandum for the United States as *Amicus Curiae*, supporting the Petition for Certiorari in the present case, at page 3, note 2.

vances" to members such as petitioner. The bill originally did not specifically exempt advances, but provided that "the bank, including its franchise, its capital, reserves, and surplus, and its income shall be exempt" from taxation (see 75 Cong. Rec. 13, 108), and in that form it passed the House (75 Cong. Rec. 13, 112). Thereafter, on the Senate floor an amendm[illegible] was proposed and promptly accepted to make specific the tax exemption for "its [the Bank's] advances to members." Senator Reed, who offered the amendment, explained that:

> We should not, of course, put the loans of this new bank in the position of being taxable in the several States. I do not believe they would be, anyway, as they are part of its capital and reserves, but this would make it clear that the bank's assets are not in fact taxable by the State or municipalities. (75 Cong. Rec. 14,659.)

Following Senate passage of the bill as amended (75 Cong. Rec. 15,095), the bill went to Conference, which concurred in the specific tax exemption for Bank "advances" but extended it to qualified non-members as well as to members (as the Senate amendment provided). H.R. Rep. No. 1775, 72d Cong., 1st Sess. 2 ("Amendment numbered 32"); H.R. Rep. No. 1782, 72d Cong. 1st Sess. 2(same). The House managers stated:

> This is a clarifying amendment to make certain that advances by home loan banks to members are tax exempt. The House recedes with an amendment applying the provision to all advances. (H.R. Rep. No. 1775 at 6; H. R. Rep. No. 1782 at 6.)

This version was eventually accepted by both Houses (see 75 Cong. Rec. 15,731 and 15,600) and in this form became present Section 1433.

III.

Contrary to the holding of the South Carolina court, Section 1464(b) (Section 5(h) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(h)), does not authorize the present tax which, as we have shown, is invalid under Section 1433 and the *Pittman* decision.

The Home Owners' Loan Act provided for the establishment of Federal savings and loan associations, and then relieved them of all State taxes except those specifically authorized by Section 1464(h). That section consents only to non-discriminatory State imposts upon a Federal association's "franchise, capital, reserves, surplus, loans or income." The issue here is whether this limited consent to non-discriminatory State taxation repeals in whole or in part Section 1433's specific prohibition against State taxation of Bank-association loan transactions, and we submit that it clearly does not.

Section 1464(h)'s consent to non-discriminatory State taxation of an association's "loans" clearly refers to loans made by the association to **their** borrowers, such as home purchasers, and not to loans between Bank and association. Similarly, the amount of "advances" which the association is legally obligated to repay to the Bank cannot be deemed either "surplus" or "income" of the association, for purposes of State taxation. The court below did not indicate any other basis for its conclusion that "the very terms of the statute [1464(h)]" grants the States "the specific right to tax" Federal and local associations alike on notes given for advances received from the Bank (R. 23).

Absent clear Congressional consent, Section 1464(h) should not be read to sanction a State tax which in substance and effect falls upon Bank "advances" specifically exempt under Section 1433. Such a reading would thwart the "manifest purpose of the broad exemption" of Section

1433 which, as *Pittman* recognized (308 U. S. at 31), "should be construed as covering the entire process of lending between" Bank and Association. Again, there is no legislative history tending to show that Congress intended, either in the original enactment of Section 1464(h) or in any of the numerous amendments to it, to validate such taxes as South Carolina has imposed here.[21]

Finally, this reading of the statute raises difficult and substantial problems which should be avoided unless the language of Section 1464(h) makes it inescapable. Thus, on adopting the lower court's construction, there arises a substantial question whether the tax, although non-discriminatory, is an invalid exaction upon essential activities of a Federal instrumentality; and, indeed, the opinions below expressly took a position on that vexing issue.[22] Similarly the State court's construction would inevitably present questions whether a given State tax is so burdensome as to interfere with Bank-association loan transactions. Such problem should not be evoked without a clear showing that Congress intended to allow States to tax these loan transactions.

Under these circumstances we submit that the State court erred in holding that the "provisions of 12 U.S.C.A. 1464(h) are clear, unambiguous and unequivocal" and that "Congress [has] expressly granted to the [State] taxing authority the right to impose and collect "such taxes as

[21] Although no less than nine amendments or revisions of Section 1464 occurred after *Pittman*, Congress did not at any time disapprove that decision, or attempt either here or elsewhere to endorse State taxes of the kind outlawed in *Pittman*. These revisions are listed in the "Note" to Section 1464 in the United States Code. Subsection (h) was itself amended in 1951 (65 Stat. 490). It previously had been amended in August 1939 (53 Stat. 1402)), prior to the *Pittman* decision in November 1939 (see 308 U. S. 21), but four months after the grant of certiorari on April 17, 1939 (306 U. S. 628) and long after the Maryland decision on December 1, 1938 (175 Md. 512, 2 A. (2d) 689) which this Court unanimously affirmed.

[22] As already noted, we consider resolution of this issue unnecessary to the disposition of this case. See notes 19 and 20.

South Carolina assessed here" (R. 23). The fact stressed by the court (see R. 21-22) that the tax is non-discriminatory is beside the point, since no State tax is valid unless Section 1464(h) permits it.

IV

Although the statutory language, the legislative history, and the *Pittman* decision establish the invalidity of the South Carolina stamp tax, we nevertheless point to policy considerations supporting this conclusion.[23]

The Federal Home Loan Bank system was established in 1932 "to place long-term funds in the hands of local institutions." H.R. Rep. No. 5418, 72d Cong., 1st Sess. 8. Such action was prompted by the fear that "we are drifting into a nation of tenants," then due chiefly to an insufficiency of "low-cost long-term installment mortgage money," (*id.* at 8), and the inability of state-chartered "building and loan associations" to meet the need (*id.* at 9). Accordingly, Congress sensed the need to "decrease costs of mortgage money", "with resulting benefit to home ownership in the form of lower costs and more liberal loans" (*id.* at 10).

The Home Owners Loan Act of 1933 provided "direct relief to home owners" (through the HOLC) (H. Rep. 55, 73d Cong. 1st Sess. 1-2), without, however, "disturb[ing] the functioning of the Federal home-loan bank system" (*id.* at 1). A major permanent objective of the 1933 Act was to establish "local mutual thrift institutions in which people may invest their funds" and "to provide for the financing of homes." Section 5(3) 44 Stat. 132, 12 U.S.C. 1464(a); see also Section 6, 44 Stat. 134, 12 U.S.C. 1465. These are

[23] Since the validity *vel non.* of the tax turns upon the statutory language, absence of financial injury to the associations or the Bank cannot sustain the tax. In pointing to the economic impact of the tax, we do not infer invalidity from injury, but only argue that the probable injury shows that Congress did not intend to authorize such a tax, and that, at all events, such authorization should not be implied from a strained reading of the statute.

the Federal savings and loan associations. Although prompted by the immediate need for home financing "in communities [then] insufficiently served by any institution or other lender on homes" (H.R. Rep. No. 55, 73d Cong., 1st Sess. 2; see S. Rep. No. 91, 73d Cong., 1st Sess. 2-3), these Federally chartered institutions "are intended as permanent associations to promote the thrift of the people locally to finance their own homes and the homes of their neighbors" (H.R. Rep. No. 55 at 2; see S. Rep. No. 91 at 2-3).[24] They are "created, insured, and aided by the Federal Government", (*Fahey v. Mallonnee*, 332 U. S., 245, 250 (1947)) as a part of a continuing "comprehensive legislative program" implemented by "large appropriations" from Congress (*Fahey v. O'Melveny & Myers*, 200 F. (2d) 420, 465 (9th Cir. 1952); their "close financial relationship" with the Government reflects their "many special privileges and advantages" and "peculiar status" under the Federal legislative scheme (*id.* at 465).

Such taxes as South Carolina and other States have imposed interfere with the Congressional purpose to make home financing opportunities widely available at minimal cost to the ultimate homeowner-borrower. In the aggregate, the taxes, both upon petitioner's individual transactions and upon all borrowing associations,[25] are substantial in

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[24] In debate, Chairman Reilly of the House Banking and Currency Committee (which reported the bill destined to become the Federal Home Loan Bank Act of 1932), pointed out that "[t]his bill will furnish to the much larger army of small-home owners *in ordinary times* borrowing facilities that will be beneficial to the small-home owner (and to prospective home-owners)." 75 Cong. Rec. 12,588 (72d Cong., 1st Sess.) See also Cong. Hancock, *id.* at 12,612 ("This legislation is intended to stimulate home ownership in normal times") as well as in a depression.

[25] For petitioner alone, a median size institution, the State tax on its notes to the Greensboro Bank (of which it is a member) amounted to $2,270.00 for the four-year period August 12, 1953-October 7, 1957 (R. 6). As of December 31, 1959, outstanding advances from the Greensboro Bank to its 70 South Carolina member associations (consisting of 43 Federal, and 27 State chartered institutions) amounted to $21,076,000. 1959 Ann. Rep. FHL Bank of Greensboro at 14-15. On the "notes or obligations" required by 1 U. S. C. 1430(c) to obtain these advances, the South Carolina tax payable amounts to $8,430.00.

dollar amount. These tax charges, moreover, are necessarily passed on by the associations in the form of increased home-financing costs to their homeowner-borrowers. Congress, however, in the closely related 1932 and 1933 enactments was vitally concerned to secure the lowest net borrowing costs to "[t]he home-owner, who, after all, is the backbone of our Nation" (H.R. Rep. No. 1418, 72d Cong., 1st Sess. 10-11), and especially to the "wage earner and people in the humbler walks of life" (*id.* at 11). Indeed, concern for the "little fellow" and "frugal wage earners" was constantly in evidence in the debates on the 1932 statute. 75 Cong. Rec. 12,575, 12,588, 12,604, 12,606, 12,611-12, 12-627 (72d Cong. 1st Sess.). Each additional charge which must be passed on to the ultimate borrower contributes to the stringency of funds for home-building. In a period of relatively high interest rates the impact of any such increase mortgage fund costs is magnified, especially to the "little fellow".[26]

The imposition of State taxes (and other charges) has an additional adverse effect on the associations. The current high interest rates and decreased homeowner borrowing, coupled with obligations to pay reasonable dividends to depositors who entrust their savings to the associations, has placed such pressure upon association profits that the amount of money available for "loss reserves" is shrinking. These "loss reserves" must be adequate to safeguard the amount of savings made by depositors, and as these reserves are reduced, the financial integrity of the associations is lessened, and the incentive to invest in a traditionally safe medium will fall with a corresponding loss of funds

[26] In September 1960, the Chairman of the Federal Home Loan Bank Board was reported as urging Federal savings and loan associations to reduce dividends paid to savings depositors so that mortgage interest rates (the chief income source of the associations) may be correspondingly lowered. "In our zeal to pay a higher return to investors, we must not overlook the basic concept of economical home financing on which this industry was founded." *Wall Street Journal*, September 4, 1960. See report of a similar statement by the Chairman, *Wall Street Journal*, December 7, 1960, p. 10, col. 2.

available for homeowner-borrowers. Congress, however, sought "[t]o encourage the people to save their own funds for their own use in these associations" (H. Rep. 55, 73d Cong. 1st Sess. 2), and thereby "to raise substantial sums of money from private savers" for lending (S. Rep. 91, 73d Cong. 1st Sess. 2-3). The addition of such charges merely increases the pressures which reduce the amount of the necessary "loss reserves."

In sum, the State tax imposed here merely injects another expense which associations such as petitioner must meet, and at the same time maintain reasonable interest rates on home mortgages, satisfactory dividend rates to depositors, and the reserves necessary to secure those deposits. If South Carolina can exact this impost, so may every other State. These considerations point to the unwisdom of reading into the statutory scheme an implied authorization for States to impose upon Bank-association loan transactions charges and taxes which inevitably enhance the costs of funds.

Respondent suggests that to give effect to the tax exemption of Federal associations is to award an "exceptional advantage" to them vis-a-vis "State chartered associations hav[ing] the same laudable purposes" (Br. in Opp. 5).

This is true only on the supposition that the statutory scheme awards a tax exemption only to Federal associations, and not to State-chartered associations. Since there is no occasion to take a position on this question we note only the likelihood that Section 1433 would probably grant the same protection to the "notes or obligations" issued by State associations obtaining advances from the Federal Home Loan Bank, since what the State tax here inhibits is the "entire process of lending", which includes the "debts which result" from the loan (to any association-borrower),

(*Pittman* case, 308 U. S. at 311). Ultimately, the fact that South Carolina might elect to continue collecting the tax from its State associations is no argument for imposing the same burden upon Federal associations. Rather the solution is for South Carolina to remove the burden from the State associations by statutory action, if, indeed, statutory action is required.

CONCLUSION

It is respectfully submitted that the judgment of the Supreme Court of South Carolina should be reversed.

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No. 126

Supreme Court of the United States

OCTOBER TERM, 1960.

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, Petitioner

versus

SOUTH CAROLINA TAX COMMISSION, and OTIS W. LIVINGSTON, Chairman et al., Respondents

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

BRIEF FOR RESPONDENTS

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No. 126

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OCTOBER TERM, 1960

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, PETITIONER

versus

SOUTH CAROLINA TAX COMMISSION, and OTIS W. LIVINGSTON, CHAIRMAN ET AL., RESPONDENTS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinion of the Supreme Court of the State of South Carolina to which this matter relates (R. 15-23) is officially reported at 236 S. C. 2 and at 122 S. E. (2d) 716.

JURISDICTION

The jurisdiction of this Court is correctly stated in petitioner's brief.

COUNTER STATEMENT OF QUESTION PRESENTED FOR REVIEW

Do the provisions of 12 U. S. C. 1464(h) serve to permit the imposition by respondents of South Carolina documentary stamps on promissory notes made in South Carolina by petitioner to the Federal Home Loan Bank of Greensboro, North Carolina, or, is such taxation precluded by the provisions of 12 U. S. C. 1421 *et seq.*, particularly 12 U. S. C. 1433?

STATUTES INVOLVED

The provisions of the pertinent portions of the statutes for consideration by the Court are set out in the Appendix, *infra*.

STATEMENT

The petitioner is a federally chartered Savings and Loan Association, doing business at Laurens, in the State of South Carolina. As such, it is a member of the Federal Home Loan Bank of Greensboro, North Carolina (R. 16) and was chartered pursuant to the provisions of the Home Owners' Loan Act of 1933 (12 U. S. C. 1464(a)) (R. 3, 7). The "Bank" itself, that is the Federal Home Loan Bank of Greensboro, was created by the Federal Home Loan Bank Act of July 22, 1932 (12 U. S. C. 1421 *et seq.*) and represents the Federal Home Loan Bank System in that geographical area wherein petitioner is located.

Within the State of South Carolina, at Laurens, the petitioner made and executed certain promissory notes to the "Bank" as the Federal Home Loan Bank of Greensboro will be called hereinafter (R. 17).

Section 65-688 of the 1952 South Carolina Code of Laws imposes a documentary stamp tax upon promissory notes geared to the amount of such note, that is, four (4¢) cents for a sum not exceeding One Hundred and no/100

($100.00) Dollars, and for each additional One Hundred and no/100 ($100.00) Dollars or fractional part thereof, four (4¢) cents. (Appendix, *infra.*) Under the provisions of this South Carolina statute, documentary taxes in the sum of Two Thousand Two Hundred Seventy and no/100 ($2,270.00) Dollars, in relation to promissory notes executed by petitioner in South Carolina, were assessed by respondents and paid under protest by petitioner (R. 15). There is no dispute with respect to correctness of the amount of the taxes assessed but rather petitioner sued to recover the entire sum paid under protest, the petitioner conceiving that the taxes were assessed illegally and wrongfully by virtue of Acts of Congress and in direct violation of a tax exemption granted to petitioner and to the "Bank" by the terms of the Federal Home Loan Bank Act, 12 U. S. C. 1421 *et seq.* (R. 6). The trial Court, as well as the Supreme Court of South Carolina (R. 15-23), held that the taxes were authorized by Federal law. An *amicus curiae* brief has been filed by the United States and the interest of the United States has been set forth therein.[1]

The provisions of 12 U. S. C. 1433 of the Federal Home Loan Bank Act prescribe certain exemptions from taxation by the United States and by the States.[2] The provisions of the Home Owners' Loan Act of 1933, under which the petitioner was chartered as a Federal Savings and Loan As-

[1] The interest of the United States is stated in part, "State taxation of promissory notes given for advances to the Federal Savings and Loan Associations by the Federal Home Loan Bank System is in violation of the express exemption provided by Congress and impairs the national policy" (Brief of *Amicus Curiae*, p. 4).

[2] These exemptions include "any and all notes, debentures, bonds, and other such obligations issued by any bank, and consolidated Federal Home Loan Bank bonds and debentures." Additionally, "the bank, including its capital, reserves and surplus, its advances, and its income, shall be exempt from all taxation". c. 522, Section 13, 47 Stat. 735, 12 U.S.C. 1433.

sociation, likewise contain exemptions from taxation.[3] The Supreme Court of South Carolina rendered its opinion holding that the respondents had properly assessed and collected the South Carolina documentary stamp taxes, Congress having granted the taxing authority that right by virtue of 12 U. S. C. 1464(h) (R. 23).

SUMMARY OF ARGUMENT

Has Congress waived immunity from taxation so as to permit the respondents to impose and collect the South Carolina documentary taxes from the petitioner? The taxes were not imposed upon the "Bank" and further the "Bank" was not required to reimburse the petitioner for the taxes paid and thus the economic burden of the tax was not upon the United States. Furthermore, the legal incidence of the tax is on petitioner and not on the Bank. As a matter of fact, this Court has construed the same provisions of the South Carolina law and has held that this tax is an excise tax, of a familiar sort, levied with respect to the creation of instruments within the state.[4] The Court stating:

> "It is simply a tax levied in relation to an act done within the state in making an instrument."

Thus, the promissory notes were the instruments created in South Carolina. Created by whom? By the maker thereof, the petitioner, and upon whom rests or falls the legal incidence of the tax.

It is contended by petitioner that to tax the instrument made and created in South Carolina by it, is to tax the "advances" of the "Bank" which is denied to the respond-

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[3] The pertinent provision reads, "and no State, * * *, shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on similar local mutual or cooperative thrift and home financing institutions." c. 64, Section 5, 48 Stat. 133, 12 U.S.C. 1464(h).

[4] *Graniteville Manufacturing Co. v. Query*, 44 F. (2d) 64, aff. 283 U. S. 376, 51 S. Ct. 515.

ents by virtue of the Act of Congress establishing the Federal Home Loan Bank system. Even petitioner, however, asserts, at most, that the tax is "an indirect impost upon the Bank (*sic*) 'advances' which Congress intended to remain immune from State taxes".[5]

It has not been contended by petitioner that South Carolina has discriminated with respect to it as it has applied the statute similarly with regard to state chartered associations. The South Carolina tax is not imposed upon an "advance" of the "Bank" but rather is imposed upon the instruments created in South Carolina by petitioner, and thus does no violence to the Act of Congress denying to the States the right to tax "advances" of a member Bank of the Federal Home Loan Bank system.

The South Carolina Supreme Court decision herein is proper in holding that the taxes as imposed do not infringe the Act of Congress.

ARGUMENT

I

The imposition of South Carolina documentary taxes upon the creation of promissory notes in South Carolina by Petitioner is authorized and does not infringe any Act of Congress.

No constitutional attack is made in this matter but rather the case is bottomed upon the claim that the South Carolina tax does violence to provisions of Federal legislation which petitioner claims denies to the respondents the right to impose the taxes.[6] Despite this, however, it will serve well to cover certain well established principles which have resulted, in large measure, from decisions wherein constitutional objections were raised.

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[5] Brief of petitioner, page 14.
[6] Brief of petitioner, page 15.

Beginning with the case of *McCulloch v. Maryland* (1819), 4 Wheat (17 U. S.), 316, 46 L. Ed. 579, it has been firmly established that the several states may not tax the United States, its properties or its agencies and instrumentalities created to carry out its lawful functions. Likewise established is the fact that the power to tax is inherent in the states' sovereignty and is essential to its existence and the power may be exercised without limit except to the extent that it may be prohibited by State or Federal Constitutions. *Reynolds Metal Co. v. Martin*, 107 S. W. (2d) 251, 269 Ky. 378, App. dismissed, 58 S. Ct. 146, 302 U. S. 646. It is further well settled that Congress has the power to bring into being an agency to carry out governmental functions and it has the power, under the Constitution, to preserve those functions. *Lawrence v. Shaw*, 300 U. S. 245; *Trotter v. Tennessee*, 290 U. S. 354; *Carson v. Roane-Anderson Co.*, 342 U. S. 232.

Equally fundamental and well established in the law are several other important principles. One of these is that a tax to be objectional must be a **direct and substantial** burden upon the government or upon the exercise of its legitimate functions. Generally, **indirect** or **remote** taxes are not objectionable even though the economic burden of the tax finally rests upon the government. *Helvering v. Mountain Producers Corp.*, 303 U. S. 376, 387, 58 S. Ct. 623; *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 52 S. Ct. 443; *Penn Dairies v. Milk Control Commission*, 318 U. S. 261, 63 S. Ct. 617; *Alabama v. King & Boozer*, 314 U. S. 1, 9, 62 S. Ct. 43, 140 A. L. R. 15.

In the instant matter, it is respectfully submitted that the tax is upon the creation of an instrument in South Carolina by the petitioner for the exaction of which Congress has waived immunity by the terms of the very act under

which petitioner is created,[7] and is not an exaction of taxes from the "Bank" which is created under a separate and distinct Act of Congress.[8]

The "Bank" and the petitioner are separate and distinct entities, the taxation of which is dealt with in two separate and distinct Acts of Congress. This becomes important when the reasons advanced by petitioner for holding the tax to be invalid are considered. The reasoning urged by petitioner is that Congress has provided that "advances" of the Home Loan Banks are exempt from taxes, that the petitioner, as a savings and loan association, makes its notes to be submitted to the Bank so as to obtain "advances", that thereby the tax is on the "advances" of the "Bank", which to tax is to impair and burden the home financing and thrift program of the United States being carried out through the federal savings and loan associations.

As a matter of fact, Congress may waive either wholly or partially, or with such limitations and qualifications as Congress may deem proper, the exemption of its instrumentalities from state taxation. *Austin v. Boston*, 7 Wall (U. S.) 694, 19 L. Ed. 224; *James v. Dravo Contracting Co.*, 302 U. S. 134, 58 S. Ct. 208, 114 A. L. R. 318.[9]

The Federal Home Loan Bank Act, upon which petitioner bottoms its case, was enacted July 22, 1932. This Act, of course, deals with exemption from taxation of, among other things, "advances" of Federal Home Loan Banks. The Home Owners' Loan Act was enacted June 13, 1933. Under this Act the respondents contend that the taxes herein are

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[7] Home Owners' Loan Act of 1933, c. 64, 48 Stat. 128, 12 U. S. C. 1464(a), (h).

[8] Federal Home Loan Bank Act, c. 522, 47 Stat. 725, 12 U.S.C. 1421, *et seq.*

[9] In this latter case, Mr. Justice Roberts, in the dissenting opinion said, "no one denies the competence of the Congress to waive the immunity in whole or in part"

authorized. In this connection, the Supreme Court of South Carolina made this appropriate statement:

> "It seems clear to us that if Congress did not intend to permit the taxation by the State and the lesser taxing authority to the extent and within the limits of 12 U.S.C.A. 1464(h), it would not have found it necessary to have passed such an Act when there was already in existence the Federal Statute, 12 U.S.C.A. 1433, which, under the position taken by the appellant, would prevent taxation of the notes executed by it."

The Supreme Court of South Carolina, it is respectfully submitted, correctly held that the Congress, under the provisions of 12 U. S. C. 1464(h), has permitted to the States the specific right to tax notes executed by the petitioner but to no greater extent than with respect to similar local institutions.[10]

II

Discussion of Decisions Bearing on the Question.

The petitioner contends that the decision in *Pittman v. Home Owners' Loan Corporation*, 308 U. S. 21 is analogous, is controlling and is decisive of the issues here, that being a case wherein it was held that the State of Maryland could not impose a documentary tax on a morfgage given by a borrower to the Home Owners' Loan Corporation as security for a loan made by it, the Home Owners' Loan Corporation, for the reason that the Act of Congress, under which the said corporation was created,[11] exempted from taxation the "loans" of the Corporation, and that "loans" covered the entire process of lending by the said Corporation including a mortgage given to it by the borrower as security.

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[10] R. 23.

[11] Home Owners' Loan Act of 1933, Section 4, 12 U. S. C. 1463 (c.e.f.).

The Supreme Court of South Carolina did not consider the *Pittman case* as controlling, and in addition to the reasons advanced therefor by that Court, respondents point out that the *Pittman case*, in nowise, is bottomed on 12 U. S. C. 1464(h) of the Home Owners' Loan Act, the tax provision dealing with Federal Savings and Loan Associations and providing waiver of tax exemption, as that provision was not before the Court, the loan there having been made by the Home Owners' Loan Corporation and the mortgage itself having been given by the borrower to the said Corporation as security for the loan of the Corporation to the borrower. It is apparent that the decision in the *Pittman case* does not extend itself to cover the matter here, that is to say, that promissory notes of a Federal Savings and Loan Association, with regard to which there is clearly set forth in the statute a waiver of tax exemption, executed by the association in South Carolina, to the Bank as security for an advance by the "Bank", is a tax on the "Bank", taxation of which is denied under an Act of Congress.

The question here is likewise dissimilar to that in *Federal Land Bank v. Crosland*, 261 U. S. 374, 43 S. Ct. 385, wherein the question related to a tax imposed by Alabama as a condition for the recording of a mortgage executed to the Federal Land Bank, the Federal Farm Loan Act of 1916 [12] providing that first mortgages executed to Federal Land Banks shall be deemed "instrumentalities of the United States, and as such, they and the income derived therefrom shall be exempt from Federal, State, municipal and local taxation".

The highest Courts of several States have had occasion to deal with the provisions of 12 U. S. C. 1464(h). In one of these, *State v. Minnesota Federal Savings and Loan Association*, 218 Minn. 220, 15 N. W. (2d) 568, it was held

[12] c. 245, Section 26; 39 Stat. 360, 380, 12 U.S.C. 931.

that allowing State Building and Loan Associations credit against their net taxable income for interest and dividends paid to their members was void as discriminating against Federal Savings and Loan Associations in violation of the tax uniformity provisions of the Minnesota Constitution [13] and 12 U. S. C. 1464(h) which prohibits a State from imposing higher taxes on such Federal Associations than on other similar local mutual or cooperative thrift and home financing institutions. There, the Court sets forth the purpose of the statutory exemption provided to the associations in these words:

> "The Act of Congress uses these words, 12 U.S.C.A. 1464(h): 'Other similar local mutual or cooperative thrift and home financing institutions'. The purpose was to protect federal associations from discriminatory taxation which would put them on any less favorable basis than state building and loan associations."

Here, of course, there is no discrimination in favor of State chartered building and loan associations or other similar local lending institutions.

In *First Federal Savings and Loan Association of Altadena v. Johnson*, 49 Cal. App. (2d) 465, 122 P. (2d) 84, the Supreme Court of California held that a Federal Savings and Loan Association was not exempt from State franchise taxes because it did not hold a franchise from the State, and that in view of the provisions of 12 U. S. C. 1464(h), the State may impose on a Federal Savings and Loan Association a franchise tax computed on the basis of annual net income derived from investments in both local and federal funds, where the tax is not greater than that levied on a similar State institution.

The Supreme Court of the State of Florida in a case dealing with a note executed in Florida and mailed to the

[13] Const. Minn. Art. 9, Section 1.

Columbia Bank for Cooperatives at Columbia, South Carolina, held that the note was subject to the Florida documentary tax, the same being an excise tax on the promise to pay, against the contention that the note became the property of an instrumentality of the United States before it was subject to the documentary tax and was, therefore, exempt under the Federal Constitution and the provisions of the Farm Credit Act of 1933, Section 68, 12 U. S. C. 1138. *Plymouth Citrus Growers Association v. Lee, Comptroller* (1946), 27 So. (2d) 415, 157 Fla. 893. The Court stated:

> "It is perfectly evident that if the Farm Credit Act inhibited the State from imposing the tax, it could not be done, but we have examined the terms of this act, and nowhere is it provided, in word or by fair implication, that notes executed by persons dealing with Federal banks, cooperatives, or associations shall be exempt from Federal, State, or other documentary taxes. It is hardly necessary to say that, so long as the Federal Law does not forbid such a tax, the State may exercise the privilege to impose it."

The Florida Court noted that it had examined the cases *of Federal Land Bank v. Crosland*, 261 U. S. 374, and *Pittman v. Home Owners' Loan Corporation*, 308 U. S. 21, but the Court found that these cases did not overcome the conclusion reached by the Court.

It is submitted that the reasoning of the Courts of the several States in the above reviewed cases is sound in recognizing the purpose and scope of the waiver of tax exemptions and that the same is applicable in the instant matter.

CONCLUSION

It is respectfully submitted that the judgment of the Supreme Court of South Carolina should be affirmed.

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February 2, 1961.

Federal Home Loan Bank Act, c. 522, 47 Stat. 725:

Section 1422. Definitions:

As used in this chapter—

(1) The term "board" means the Federal Home Loan Bank Board.

(2) The term "Federal Home Loan Bank" means a bank established by the board under authority of this chapter.

(4) The term "member" (except when used in reference to a member of the board) means any institution which has subscribed for the stock of a Federal Home Loan Bank.

(5) The term "home mortgage loan" means a loan made by a member or a nonmember borrower upon the security of a home mortgage.

(9) The term "nonmember borrower" includes an institution authorized to secure advances from a Federal Home Loan Bank under the provisions of subsection (e) of section 1426 of this title.

(12 U. S. C. 1422)

Section 1424. Eligibility of member and nonmembers borrowers; loans to home owners.

(a) Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, or savings bank shall be eligible to become a member of, or a nonmember borrower of, a Federal Home Loan Bank if such institution (1) is duly organized under the laws of any State or of the United States; (2) is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States; and (3) makes such home mortgage loans as, in the judgment of the board, are long-term loans (and in the case of a savings bank if, in the judgment of the board, its time deposits, as defined in section 461 of this title, warrant its making such loans). No institution shall be eligible to become a member of, or a nonmember borrower of, a Federal Home Loan Bank if, in the judgment of the

board, its financial condition is such that advances may not safely be made to such institution or the character of its management or its home-financing policy is inconsistent with sound and economical home financing, or with the purposes of this chapter.

(b) An institution eligible to become a member or a nonmember borrower under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of the bank of a district adjoining such district, if demanded by convenience and then only with the approval of the board.

(c) Notwithstanding the provisions of clause (2) of subsection (a) of this section requiring inspection and regulation under law as a condition with respect to eligibility for membership, any building and loan association which would be eligible to become a member of a Federal Home Loan Bank except for the fact that it is not subject to inspection and regulation under the banking laws or similar laws of the State in which such association is organized shall, upon subjecting itself to such inspection and regulation as the board shall prescribe, be eligible to become a member.

(12 U. S. C. 1424)

Section 1426. Capital stock—Minimum amount; subscription books.

(e) If the law of the State under which an institution described in section 1424 of this title operates does not permit such institution to subscribe for stock in the Federal Home Loan Bank but if such institution has the power to borrow money and give security therefor, the board may permit such institution to obtain advances on the same terms and conditions and subject to the same limitations as members (except that such institution shall not be required, during the period during which advances may be made under this subsection, to subscribe for stock in the Federal Home Loan Bank or to deposit such stock as collateral security as re-

quired in section 1430 of this title), but such institution shall be required to keep on deposit such security in addition to home mortgages, for such advances, as the board shall determine, which shall equal in value 1 per centum of the aggregate unpaid principal of such institution's home mortgage loans (but not less than $500.00). No advance to any such institution shall be made under authority of this subsection after the State in which the institution is organized enacts legislation authorizing such institution to subscribe for Federal Home Loan Bank stock or after the expiration of the next regular session of the legislature of such State begun after July 22, 1932, whichever is earlier. If, at the end of such time, such institution is not authorized to subscribe for stock, the bank shall proceed to liquidate the indebtedness of such institution to the bank and to terminate its relations with such institution. No advance shall be made under authority of this subsection which matures more than one year after the advance is made, but the bank may renew any such advance for yearly periods, or less, thereafter. The maturity of no advance authorized under this subsection shall be later than the time of the enactment of legislation authorizing such institution to become a member or the expiration of such session of the legislature of the State, whichever is earlier.

(12 U. S. C. 1426(e))

Section 1430. Advances—Authorization to make; limitation on amount.

(a) Each Federal Home Loan Bank is authorized to make advances to its members upon the security of home mortgages, or obligations of the United States, or obligations fully guaranteed by the United States, subject to such regulations, restrictions, and limitations as the Board may prescribe.

(c) Such advances shall be made upon the note or obligation of the member or nonmember borrower secured as provided in this section, bearing such rate of interest as the Board may approve or determine, and

the Federal Home Loan Bank shall have a lien upon and shall hold the stock of such member as further collateral security for all indebtedness of the member to the Federal Home Loan Bank. At no time shall the aggregate outstanding advances made by any Federal Home Loan Bank to any member exceed twelve times the amounts paid in by such member for outstanding capital stock held by it, or made to a nonmember borrower exceed twelve times the value of the security required to be deposited under subsection (e) of section 1426 of this title.

(12 U. S. C. 1430(a), (c))

Section 1433. Exemption from taxation; obligation acceptable as credit on debt of home owner.

Any and all notes, debentures, bonds, and other such obligations issued by any bank and consolidated Federal Home Loan Bank bonds and debentures, shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The bank, including its franchise, its capital, reserves, and surplus, its advances, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that in any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The notes, debentures, and bonds issued by any bank, with unearned coupons attached, shall be accepted at par by such bank in payment of or as a credit against the obligation of any homeowner debtor of such bank.

(12 U. S. C. 1433)

Home Owners' Loan Act of 1933, c. 64, 48 Stat. 128:

Section 1462. Definitions.

As used in this chapter—

(d) The term "association" means a Federal Savings and Loan Association chartered by the Board as provided in section 1464 of this title.

(12 U. S. C. 1462(d)).

Section 1464. Federal Savings and Loan Associations—Organization authorized.

(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "Federal Savings and Loan Associations," and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States.

(h) Such associations, including their franchises, capital, ~~reserves~~ reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of Title 26 with respect to wages paid after December 31, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes), and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on

other similar local mutual or cooperative thrift and home financing institutions.

(k) When designated for that purpose by the Secretary of the Treasury, any Federal savings and loan association or member of any Federal Home Loan Bank may be employed as fiscal agent of the Government under such regulations as may be prescribed by said Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. Any Federal savings and loan association or member of any Federal Home Loan Bank may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality of the United States.

(12 U. S. C. 1464(a), (h), (k))

Code of Laws of South Carolina (1952), Volume 6, Title 65:

Article 2

DOCUMENTARY STAMP TAX

Section 65-688. Notes, mortgages; assignments of wages, etc.

The tax on promissory notes, except bank notes issued for circulation and executory contracts for the payment of money which are executed or carried out in an instrument of writing to which documentary stamps are affixed, non-negotiable notes, written obligations to pay money, except as may otherwise be provided for in this chapter, assignments of salaries, wages or other compensation and mortgages which incorporate the certificate of indebtedness not otherwise shown in a separate instrument, and each renewal of any thereof, shall be for a sum not exceeding one hundred dollars, four cents and for each additional one hundred dollars, or fractional part thereof, four cents.

1942 Code Section 2525; 1932 Code Section 2525; 1928 (35) 1089; 1932 (37) 1378.

CERTIFICATE OF SERVICE

I, James M. Windham, Counsel for Respondents, South Carolina Tax Commission and Otis W. Livingston, Chairman *et al.*, and a member of the Bar of the Supreme Court of the United States, hereby certify that I served copies of the foregoing brief on the several parties as follows:

1. On the United States, as *amicus curiae*, by mailing copies in duly addressed envelope, with first class air mail postage prepaid to the following counsel of record:

J. LEE RANKIN
Solicitor General
Department of Justice
Washington 25, D. C.

CHARLES K. RICE
Assistant Attorney General
Department of Justice
Washington 25, D. C.

2. On petitioner by delivering copies of same personally, with a written acknowledgement thereof to:

FRANK K. SLOAN
900 Security Federal Building
Columbia, South Carolina

ERNEST L. FOLK III
900 Security Federal Building
Columbia, South Carolina

JAMES M. WINDHAM

On this 2nd day of
February, 1961.

SUPREME COURT OF THE UNITED STATES

No. 126.—October Term, 1960.

Laurens Federal Savings and Loan Association, Petitioner, v. South Carolina Tax Commission, et al. } On Writ of Certiorari to the Supreme Court of the State of South Carolina.

[March 20, 1961.]

Mr. Justice Black delivered the opinion of the Court.

The question presented is whether the State of South Carolina has power to require a Federal Savings and Loan Association located in that State to pay documentary stamp taxes on promissory notes executed by the Association in favor of a Federal Home Loan Bank to cover loans from the Bank to the Association.

Petitioner is a Federal Savings and Loan Association organized under the Home Owners' Loan Act of 1933[1] and doing business in Laurens, South Carolina. It is also a member, with borrowing privileges, of the Federal Home Loan Bank of Greensboro, North Carolina, which was established under the Federal Home Loan Bank Act of 1932.[2] For the purpose of making mortgage money available in the community which it serves, petitioner Federal Savings and Loan Association has since August 12, 1953, secured "advances," or loans, from the Federal Home Loan Bank of Greensboro totalling $5,675,000, for which petitioner executed written promissory notes to the Bank as required by the 1932 Act. The State assessed against petitioner documentary stamp taxes on these notes of $2,270 under a state statute imposing a stamp

[1] 48 Stat. 128, 12 U. S. C. §§ 1461-1468.
[2] 47 Stat. 725, 12 U. S. C. §§ 1421-1449.

tax on promissory notes at the rate of four cents on each $100.[3] Petitioner paid these taxes under protest and then brought the present action in the state court for refund of the payment,[4] claiming that the imposition of the taxes constituted an unlawful attempt by the State to tax the "advances" of the Federal Home Loan Bank of Greensboro in violation of the provision of the 1932 Act exempting such banks from state taxation. This provision states, in pertinent part:

> "The bank, including its franchise, its capital, reserves, and surplus, *its advances*, and its income, shall be exempt from all taxation now or hereafter imposed by the United States . . . or *by any State* . . . ." 12 U. S. C. § 1433. (Emphasis supplied.)

The Supreme Court of South Carolina affirmed the judgment upholding the State's taxing power, basing its affirmance on two grounds.[5] It was of the opinion, first, that the exemption provision of the 1932 Act, although completely exempting the loans of the Federal Home Loan Bank from state taxation, did not cover the stamp taxes on the promissory notes securing the loans because these taxes were imposed upon the borrowing Savings and Loan Association rather than upon the lending Home Loan Bank and for this reason should not be considered taxes on the Bank's loans within the meaning of the 1932 provision. Secondly, the state court held that regardless of the original scope of the 1932 exemption, that exemption was implicitly repealed as to transactions like this one by the taxation provision of the Home

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[3] Code of Laws of South Carolina, § 65-688 (1952).

[4] Such suits are authorized by Code of Laws of South Carolina, § 65-2662 (1952).

[5] 236 S. C. 2, 112 S. E. 2d 716.

Owners' Loan Act of 1933. We granted certiorari in order to determine whether the State has imposed a tax forbidden by Congress.*

The first question is whether the immunity granted "advances" of the Federal Home Loan Bank by the 1932 Act is broad enough to bar state stamp taxes on this loan transaction. We decided a very similar question in *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21. There the State of Maryland imposed a stamp tax upon the recording of mortgages at the rate of 10 cents for each $100 of the principal amount of the mortgage indebtedness. The Home Owners' Loan Corporation sought to record a mortgage upon payment of the ordinary recording fee without payment of the additional state stamp tax. The mortgage had been issued to it as security for a loan which the Corporation had made under now defunct provisions of the Home Owners' Loan Act of 1933. Section 4 (c) of that Act provided that "[t]he Corporation, including . . . its loans" shall be exempt "from all taxation . . . now or hereafter imposed . . . by any State" except for real estate taxes. We unanimously affirmed the holding of the state court that this exemption provision, practically identical in language and substance to the exemption in 12 U. S. C. § 1433, precluded application of the recording tax to mortgages securing loans from the Corporation.

The state court in the present case, although drawing no distinction between the terms "loans" and "advances," nevertheless thought the *Pittman* decision inapplicable here because in that case the mortgage was presented for recording by the exempt lender itself (the Home Owners' Loan Corporation) while here the South Carolina tax was assessed against the borrowing petitioner association rather than against the exempt lender (the Home Loan

* 364 U. S. 812.

Bank). We distinctly said in *Pittman*, however, that the fact that the state taxing statute did not require payment of the tax by the lender has "no determining significance," our reason being that " 'whoever pays it it is a tax upon the mortgage and that is what is forbidden by the law of the United States.' " [7] We went on in *Pittman* to recognize that the real question was whether the "critical term . . . 'loans' . . . should be construed as covering the entire process of lending, the debts which result therefrom and the mortgage given . . . as security." [8] The question here is the same as to the synonymous term "advances" [9] and as to the promissory notes securing the advances, since the language of the exemption is equally broad. The factors given weight in the *Pittman* opinion in deciding that the exemption covered the entire loan transaction are also present here. The Act under consideration there required that the loans "be secured by a duly recorded home mortgage" just as here the Act requires the advances to be secured by the note or obligation of the borrower. Here, as we said in *Pittman*, therefore, the documents sought to be taxed "were indispensable elements in the lending operations authorized by Congress" [10] and were required for the protection of the lending institution. The tax in *Pittman* was

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[7] 308 U. S., at 31, citing *Federal Land Bank* v. *Crosland*, 261 U. S. 374, 378–379.

[8] 308 U. S., at 31.

[9] The fact that the term used throughout the 1932 Act with reference to these transactions is "advances" rather than "loans" is not a significant distinction from *Pittman* but merely represents a congressional choice between synonyms, as was indicated by Senator Reed in introducing on the Senate floor the amendment which added the word "advances" to the exemption provision:

"MR. REED. We should not, of course, put the *loans* of this new bank in the position of being taxable in the several States." 75 Cong. Rec. 14659. (Emphasis supplied.)

[10] 308 U. S., at 32.

"graded according to the amount of the loan" [11] and here too the face value of the notes is the measure of the tax.

While the question of the breadth of the exemption of "advances" in the 1932 Act thus is persuasively answered by our reasoning in *Pittman*, the same conclusion is called for by the language and legislative history of that Act as a whole. It set up a system of federally chartered Home Loan Banks for the purpose, as stated in the House and Senate Committee Reports, of placing "long-term funds in the hands of local institutions" in order to alleviate the pressing need of home owners for "low-cost long-term installment mortgage money" and to "decrease costs of mortgage money" with a "resulting benefit to home ownership in the form of lower costs and more liberal loans." [12] It is to this end that the Act authorizes the Federal Home Loan Banks to make "advances" of funds to eligible borrower institutions "upon the note or obligation" of the borrower secured primarily by mortgages on homes.[13] The exemption of these "advances" from taxation obviously is in keeping with the Act's overall policy of making these mortgage funds available at low cost to home owners. Regardless of who pays the documentary stamp taxes here at issue, the necessary effect of the taxes is to increase the cost of obtaining the advances of funds from the Home Loan Bank to be used in making loans to home owners. In its impact, therefore, this tax, whether nominally imposed on the Bank or on the petitioner, is bound to increase the cost of loans to home owners and thus contravene the basic purpose of Congress in insulating these advances from state taxation. We hold that it was error to construe the exemption provision of the 1932 Act as not broad enough to bar

[11] 308 U. S., at 31.

[12] H. R. Rep. No. 1418, 72d Cong., 1st Sess., pp. 8–10; S. Rep. No. 837, 72d Cong., 1st Sess., pp. 9–11.

[13] 12 U. S. C. §§ 1429–1430b.

imposition of the State's stamp taxes on the notes which were an integral part of these loan transactions.

This leaves for consideration the state court's holding that, in instances where the borrower is a Federal Savings and Loan Association such as petitioner, the exemption conferred upon the entire loan transaction by the 1932 Act was impliedly repealed by the taxation provision in the Home Owners' Loan Act of 1933. The court based this holding upon the following language of the 1933 Act:

> ". . . [N]o State . . . or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions." 12 U. S. C. § 1464 (h).

This provision unequivocally bars discriminatory state taxation of the Federal Savings and Loan Associations. The state court held that this prohibition of discriminatory taxes also impliedly authorizes all nondiscriminatory state taxes imposed on these Federal Associations, thereby to that extent repealing the 1932 exemption. We agree with petitioner, however, that in enacting § 1464 (h) in 1933 Congress did not, either expressly or impliedly, repeal the provision of the 1932 Act which had exempted these loan transactions from state taxation. Clearly there is no express language providing for such repeal, and it is signficant that when other provisions of the 1932 Act were to be superseded by the 1933 Act they were repealed expressly and not by implication.[14] It also would be difficult to think of less apt circumstances for the finding of an implied repeal. These two Acts, both designed to provide home owners with easy credit at low cost, were passed within a year of each other on the basis

[14] See 48 Stat. 129; H. R. Rep. No. 55, 73d Cong., 1st Sess., p. 1; S. Rep. No. 91, 73d Cong., 1st Sess., p. 1.

of the same hearings and when read together form a consistent scheme in which the 1932 exemption provision contributes to the major purpose of low-cost credit precisely as it did before passage of the 1933 Act. Nor is there even an intimation in the legislative history of the 1933 Act of any intention to reduce the scope of the exempt status of Home Loan Banks. Indeed, the only comment that would seem to have any bearing on the matter is the statement in the House and Senate Committee Reports that the 1933 Act was to provide new means of "direct relief to home owners" without "otherwise disturb[ing] the functioning of the Federal home-loan bank system." [15] Moreover, a construction of the 1933 Act to permit state taxation of these loan transactions when the borrower is a Federal Savings and Loan Association would bring about an incongruous result. The States would still be barred by the exemption provision of the 1932 Act from taxing these transactions when the borrower is a state-chartered association.[16] To contend that the 1933 Act allows the State to tax Federal Associations on the loan transactions when it is barred by the 1932 Act from similarly taxing state-chartered associations is to urge the very kind of discriminatory taxation which the 1933 Act itself emphatically prohibits. And surely it would be completely unwarranted to construe the 1933 Act, which concerns only Federal Savings and Loan Associations, as eliminating the exemption on Home Loan Bank "advances" when the borrower is a state-chartered institutiton.

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[15] H. R. Rep. No. 55, 73d Cong., 1st Sess., p. 1, see S. Rep. No. 91, 73d Cong., 1st Sess., p. 1.

[16] The 1932 exemption of Home Loan Bank "advances" obviously does not in any way depend upon the fact that the borrower is a Federal Savings and Loan Association, as is made all the more evident by the fact that such Federal Associations did not come into existence until passage of the 1933 Act.

For all these reasons, the more sensible as well as the more natural conclusion is that in the 1933 Act Congress left unimpaired the exemption of these loan transactions from state taxation conferred by the 1932 Act. The judgment of the state court therefore is reversed and the cause remanded for proceedings not inconsistent with this opinion.

Reversed and remanded.